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A TREATISE  
ON  
**The High Peak Mineral Customs**  
AND  
**Mineral Courts Act, 1851**

(14 & 15 VICT. c. 94),

ANALYTICALLY AND PRACTICALLY ARRANGED:

EMBRACING

FIRSTLY,

THE MINERAL CUSTOMS ARTICLES

AND DUTIES OF THE KING'S MINE, AND CERTAIN PARTS OF THE  
HUNDRED OF HIGH PEAK, IN THE COUNTY OF DERBY,  
PART OF THE HUNDRED OF THE WELLS, IN COUNTY OF LANCASTER;

SECONDLY,

THE PROVISIONS CONTAINED IN SUCH ACT  
FOR THE BETTER ADMINISTRATION OF JUSTICE IN THE  
BARMOTE COURTS OF SUCH DISTRICT;

AND

THIRDLY,

THE PRACTICE AND PROCEEDINGS OF SUCH  
BARMOTE COURTS.

WITH NOTES, REFERENCES, FORMS, AND A COMPOUND INDEX.

By THOMAS TAPPING, Esq.  
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,  
*Author of a Treatise on the Well of Mandamus, &c.*

LONDON:

SHAW AND SONS, FETTER LANE,  
Late Printers and Publishers.

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**Law Printers and Publishers.**

1851.





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PRINTED BY SHAW AND SONS, FETTER LANE.

TO

THE MOST NOBLE WILLIAM SPENCER,

Duke of Devonshire, K.G. P.C.

CROWN LESSEE OF THE MINERAL DUTIES OF THE  
HIGH PEAK, DERBYSHIRE,

&c. &c. &c.

**This Treatise**

ON THE

HIGH PEAK MINING CUSTOMS AND MINERAL COURTS  
ACT, 1851,

IS MOST RESPECTFULLY INSCRIBED

BY

THE AUTHOR.



## PREFACE.

---

THE High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94), when attentively considered, is by far the most important Act of Parliament having relation to mines and minerals, that has for some years received the sanction of the Legislature; and though it is more comprehensive in its provisions than either the Forest of Dean Act (1 & 2 Vict. c. 43), or the Stannary Acts, which are almost numberless, yet it is of all of them by far the most simple in its details, and happy as to the conciseness with which most of its enactments are expressed; thus, at the same time, furnishing proof of the great desire which the Government evinces to fully develop the vast mineral wealth of the United Kingdom (a); and giving credit to the recent improvement in the draughting of Acts of Parliament.

Both the importance and nature of the Act may be learnt from its title, which states its threefold character thus—

1. To define and amend the mineral customs of the King's Field, and of certain parts of the hundred

(a) The mineral wealth of the United Kingdom far exceeds that of any other European State, and furnishes four-ninths of the raw mineral produce derived from *all* Europe. The annual value of the mineral produce of this kingdom amounts to 24,000,000*l.*; and the capital and labour employed in its extraction and application represent a much larger sum. See *Prospectus of the Government School of Mines*.

- of High Peak, in the county of Derby, part of the possessions of the Queen, in right of her duchy of Lancaster ;
2. To make provisions for the better administration of justice in the Barmote Courts therein ; and,
  3. To improve the practice and proceedings of the said courts.

As each of these divisions would, if thoroughly investigated, extend over more space and occupy more time than I can now give to them, I have for the present contented myself with presenting, for the perusal of those interested in the subject, the following pages, which contain, in two chapters, a careful and practical analysis of the above Act ; to which are added such notes and references as will, it is hoped, render the work useful, both to the miner and legal practitioner. A nearly literal copy of the Act will be found in an appendix ; and affixed thereto a copious index.

The first chapter contains the **twenty-eight Articles and Customs** henceforth to form the Derbyshire miner's legal Code within the above-mentioned district. This Customal I have endeavoured to render practically useful by cross references, and notes of the cases and points that have been settled by the courts of law upon certain of the abolished articles that were analogous in substance.

The second chapter treats of the Officers of the High Peak, namely, Steward, Deputy Steward, Head Barmaster, Deputy Barmasters ; also of the Great and Small Barmote Courts, their jurisdiction and practice, the Grand Jury, their duties, &c. ; and lastly, of those interlocutory mat-

ters, i. e., warrants, penalties, interpleader powers, costs, registry of proceedings, &c., &c., which the Legislature has deemed necessary to accomplish the object of providing an amended mining code for the miners of the above-mentioned district.

By the abolished Articles and Customs the Steward had power to inflict punishments for all offences of a criminal character committed upon mines and mineral property (*b*). This jurisdiction is stated in the case of *Arkwright v. Cantrell* (*c*) to have been latterly limited to the punishment of small depredations. The Articles and Customs provided by the Act, however, do not contain any mention of offences of a criminal character or of misdemeanors. Also dower (*d*) and tithes (*e*) were ascertained, to some extent, by the ancient customs; but by those now substituted no mention is made of these titles.

The practical value of the Act will speedily be tested, as the first Great Barmote Court to be holden under the Act will be held on the first Tuesday in next October, before which day the numerous officers, above enumerated, must be appointed, and should then be sworn to perform their duties.

(*b*) Pettus' Fod. Reg.; and *see post*, pp. 5, 6.

(*c*) 7 A. & E. 565.

(*d*) And he (by custome) that his mine doth free,  
A good estate thereby doth gain in fee;  
And if he die, and leave behind a wife,  
The custom doth endow her for her life.

*Manlove's Liberties of Derby Lead Mines.*

(*e*) Tithes are paid for lead ore in the parishes of Eyam and Wirksworth. The curious reader is also referred to Manlove's work cited in the previous note.

It is, however, to be regretted that the territorial jurisdiction of the Act is not so accurately limited as it might have been, the more so as the Act expressly provides that the Steward and other officers guilty of an excess of jurisdiction are not to be relieved from the ordinary legal consequences of such excess: *see post*, pp. 34, 95. In other respects the Act must be admitted to have been carefully prepared.

T. TAPPING.

9, INNER TEMPLE LANE,  
TEMPLE,

29 Sept. 1851.

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A TREATISE  
ON  
THE HIGH PEAK MINING CUSTOMS AND  
MINERAL COURTS ACT, 1851.

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14 & 15 VICT. c. 94.

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CHAPTER I.

THE object of the following pages is to elucidate the Act 14 & 15 Vict. c. 94, passed on the 7th August, 1851, which, by section 1, is directed to be called and pleaded by the short title of "The High Peak Mining Customs and Mineral Courts, 1851."

In order as completely as possible to effect this, it is proposed to consider its provisions in the order stated in the preface, and as expressed in the full title or heading of the Act, viz. :—

- 1st. That division of the Act which defines and amends the mineral customs of certain parts of the hundred of High Peak, part of the possessions of the Queen in right of her duchy of Lancaster.
- 2nd. That division which makes provision for the better administration of justice in the barmote courts therein,—and
- 3rd. That division which makes provision for the improvement of the practice and proceedings of the said courts.

As however the 2nd and 3rd divisions are intimately connected, it is proposed, for the sake of convenience, to consider them together in the second chapter.

It will be remarked that the first division of the Act both *defines* and *amends* the mineral customs in the Act mentioned, and

thus divides this portion of the subject into two parts, in the former of which will be treated the jurisdiction of the Act and of the barmote courts, and in the latter will be considered the several articles, customs, and duties by such Act established.

The following analysis of the division shews the order in which it will be treated :

**DEFINING AND AMENDING MINERAL ARTICLES  
OR CUSTOMS.**

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*Defining jurisdiction.*] We are informed by the preamble of the Act, that one of the prime objects in passing it was to remove those doubts which had arisen as to whether the jurisdiction of the barmote courts extended over such parts of the hundred of High Peak within which the Queen was entitled to mineral duties, but which were not included in the King's Field, although the same rights of mining were exercised therein. The Act has not altogether remedied this defect, and it is still a matter of the first importance that its territorial jurisdiction should be clearly understood, in order that the steward and other officers engaged in its administration may not be misled into an excess of jurisdiction, from the legal effects of which the 43rd section does not afford them protection.

It must be borne in mind that the principal parts of the county

of Derby in which lead ore is found in considerable quantity are the hundred of High Peak, and the wapentake of Wirksworth, both of which districts have been immemorially subject to certain ancient and very peculiar mineral laws and customs, and to the payment of certain mineral duties, different however in each district.

Within the hundred of High Peak and the wapentake of Wirksworth, there is contained a tract of mining country comprising neither the *whole* of the hundred *nor* of the wapentake, but *part* only of each—the portion contained within the hundred of High Peak consisting of seven smaller liberties or districts, to wit, Castleton, Bradwell, Hucklow, Winster, Moniasb, Taddington, and Upper Haddon,) called the *King's Field*, otherwise the *King's Fee*, which is supposed to have been the property of the crown from the period of the Norman Conquest (a), as it was about that time and for long afterwards in the same custody with the castle. Be that, however, as it may, it is indisputable that all the subjects of this realm have from time immemorial had, or claimed to have, a right to search for, sink, and dig mines or veins of lead ore within the *whole* of the *King's Field*, subject to certain ancient mineral laws and customs, and upon paying certain duties to the Queen; she being in right of her duchy of Lancaster seized of it to her and her heirs and successors, and entitled to the mineral duties arising therefrom and from certain other parts of the hundred of High Peak (b).

(a) The Domesday Book mentions three mines at Wirksworth, and one in each of the manors of Crich, Ashford, Bakewell, and Mesterton. The King's mine at Wirksworth was granted to Robert del Don by Edward I. (Pat. Rot. 3 Edw. 1, 29): that of Crich, which had been granted by King John to Hubert Fitz Ralph, was confirmed by Edw. II. to Roger de Belers in 1325 (Pat. Rot. 19 Edw. 2, p. 1, 16).

(b) The sovereign prince, being seized as lord or owner of the soil of the district called the King's Field, had, of common right, all the minerals within it, and must therefore be presumed to have granted the privilege of searching for and getting the minerals, under certain regulations, and on payment of certain mineral duties. The commencement of this privilege, from its great antiquity, has never been, though often attempted to be, proved; but the evidence arising from an inquisition taken in the reign of Edw. I., which found that his then majesty was entitled to the thirteenth dish of the ore gained at the mines, has been judicially held to afford sufficient evidence to establish and ascertain the right of the crown to such duties. *Attorney-General v. Wall*, 4 *Brown's P. C.* 673.

The Act 14 & 15 Vict. c. 94, s. 16, however, enacts that the territorial jurisdiction of such Act, and of the mineral laws and customs thereby established, shall be held to extend over the *whole* of the district called the King's Field, and also over all the parts of the hundred of High Peak in which the Queen in right of her duchy of Lancaster is entitled to the mineral duties. As therefore, on the one hand, such 16th section makes no mention of the wapentake of Wirksworth, within which, as before stated, mineral laws and customs have immemorially obtained, and mineral duties for a like period have been paid, it follows that so much of such wapentake as is not comprehended within the *King's Field* remains unaffected by the Act, and will therefore, as heretofore, continue to be governed by its ancient laws and customs; so on the other hand, as such section declares that the district called the King's Field, and those parts of the hundred of High Peak in which the Queen in right of her duchy of Lancaster is entitled to mineral duties, are within the Act, so such district and parts, and no others, will be governed by such Act, and the articles, laws, and customs therein contained.

It is to be regretted that the territorial limits of the jurisdiction of the Act have not been more definitely expressed; the error arises by declaring such limits to be identical with others which are uncertain. The question of jurisdiction will in future be probably more frequent and difficult than before the Act.

*Amending the mineral customs.*—As stated in the preceding section, the whole mineral district of Derbyshire, as regards its mining concerns, has been immemorially governed by certain ancient laws, customs, and duties, the origin and commencement of most of which are of so high an antiquity, that their origin has baffled the researches of the most diligent enquirer.

Historians seem, however, to be perfectly agreed, that beyond all doubt the Romans, and probably the Britons, worked the lead mines of Derbyshire (c); the former having been governed by a code of mineral laws, not much unlike those which were in operation before the passing of the present Act (d).

(c) Lyson's Derbysh., p. cxclii.

(d) The Roman law as to mining affairs, is to be chiefly found in the Code 11. 7 (6), the title of which is, "*De metallariis et metallis et procuratoribus metallorum.*" Comprised in the above title is a *lex*, which shows that any Roman citizen might, under certain

Since the time of the Romans, the mineral laws of Derbyshire, as may be reasonably supposed, have undergone many and great changes; especially in the sixteenth year of the reign (e) of King Edward I., who, on the 28th of April, 1287, by a warrant directed to the sheriff of the county of Derby—stating that Reynold of the Ley, and William of Memill, had been assigned to inquire by the oaths of good and lawful men of the county, by which the truth might be best known, of the liberty which the miners then claimed in the lead mines in Derbyshire, and what liberties they had then hitherto used to have, and by what means, and how, and from what time, and by what warrant,—commanded such sheriff, that on a certain day and place which the said Reynold and William were to appoint, he was to cause to come before them so many and such good and lawful men of his bailiwick, by which the truth might then the best be known in the premises by the inquiry.

In obedience to this commission an inquisition was taken at Ashborne, in the said county, upon Saturday next after the Holy Trinity, in the same year, before the said Reynold and William, by the oaths of twelve persons therein named: by which many laws, rights, and customs were found, which the miners afterwards petitioned the King should be confirmed to them under the Great Seal, in consideration of the dangerous nature of their occupations.

These laws affected to provide for the miners a code, both

restrictions as to mining under buildings, &c. (analogous to the exceptions in article 1, *post*, p. 9), work the minerals contained in the lands of the empire. Thus, a rescript of the emperors Valentinian and Valens to Cresconius, com. metallorum, states: "*Perpensa deliberatione duximus sanciendum, ut quicumque metallorum exercitium velit affluere, is labore propria et sibi et reipublicæ commoda comparet. Itaque si qui sponte confluxerint, eos laudabilitas tua octonos scrupulos in BALLUCA, cogat exsolvere.*" These eight scruples of gold ore very nearly corresponded with the duties of *lot and cope* mentioned in the ninth article of the Act of parliament under comment; they were also paid in kind, and were an ascertained portion of the ore raised; also the crown officer who in Derbyshire collected the above duties, has been, from time immemorial, called the Bergmaster or Barghmaster, now Barmaster; and such officer, among the Romans, was designated by the official name of "*Procurator metallorum.*" The student, who wishes to become acquainted with the further and more striking parallels between the Roman laws and the Derbyshire customs, may consult, with advantage, Perezius's comment on the above title of the code.

(e) 1 Pilkington's Derbysh. p. 110. Pettus' *Fod. Reg.* 82.

civil and criminal, by which they and their mining affairs should be thenceforth governed. Doubtlessly the civil part of the code fully and satisfactorily met the wants of the miners, as the provisions, although singular and unique, are yet reasonable. Our wonder, however, is strongly excited by a perusal of the criminal branch of the code, the punishments contained in which are singularly sanguinary and penal. How they could have been found by the jury, or have received the sanction either of the royal commissioners or of the crown, all of the present age must be at a loss to conceive! yet these laws were not only tolerated but enforced in England during nearly four centuries, and so late as the year 1653.

The instance which it is proposed to cite of the brutality of their criminal punishments, is that which was consequent upon the third attain of stealing from the lead mines; it was, that the culprit be taken and stricken through the right hand in the palm with a knife up to the haft into the stow (*f*), and there he be compelled to stand till he died, or else cut himself loose. In the latter case, he was compelled to forswear the franchise of the mine. Pilkington's (*g*) version of the punishment is inaccurate; it is, however, this, that the hand of the criminal was nailed to a table, and in that state he was left without meat or drink, having no means for freedom, but by employing one hand to cut off the other (*h*).

(*f*) Or stowse; the wood-work of part of the mine. There is one in the collection of the Museum of practical geology in Jermyn-street; the notice appended to which erroneously states that "the stowse is used by the miners in Derbyshire as a *symbol of possession*, which must be constantly kept in the range of the vein 'in all men's sight,' in order to secure possession of such vein; and that *this custom* is by an Act passed in the session of 50—51, recognized as law in the High Peak;" a consultation, however, of the following pages will show that the mine must be worked, and may be transferred by grant, and that no mention is made of a stowse.

(*g*) Pilkington's Derbysh. p. 57.

(*h*) Manlove, steward of the barghmoot court, in the following lines accurately records this custom. The fact that he mentions it in his poem in 1653, shows that at that time it had not fallen into desuetude.

For stealing oar twice from the minery,  
The thief that's taken fined twice shall be,  
But the third time that he commits such theft  
Shall have a knife stuck through his hand to th' haft  
Into the stow, and there till death shall stand,  
Or loose himself by cutting loose his hand;  
And shall forswear the franchise of the mine,  
And always lose his freedom from that time.

In the reigns of King Edward VI. and Philip and Mary, these mineral laws and customs received some alterations, additions, and improvements; also about fifty years ago further new regulations were proposed, approved, and passed into laws, at the great barmote courts of the High Peak and wapentake of Wirksworth; and it was by the laws, articles, and customs so found, passed and altered on the occasions and times before mentioned, that the whole of the lead mining district of Derbyshire as to its mining concerns had always been governed until the passing of the 14 & 15 Vict. c. 94 (i).

For some years previously to the passing of the 14 & 15 Vict. c. 94, which took place on the 7th August, 1851, the mineral laws and customs of the King's Field had, through neglect and desuetude, become uncertain and undefined, and also were in many respects altogether inapplicable to the scientific mode of mining operations, which had been for some period carried on there. It had also, for some time, become doubtful whether the jurisdiction of the barmote courts extended over such parts of the hundred of High Peak within which the Queen is entitled to the mineral duties, but which are not included in the King's Field, although, as before stated, the same rights of mining have always been exercised therein. So that in order that the mineral laws and customs should be revised, altered, and amended, so as to be made applicable to the present state of mining operations within the hundred, and that the jurisdiction of the great and small barmote courts should be more clearly settled and defined, the Act 14 & 15 Vict. c. 94, was passed.

The 16th section of the above Act therefore declares, that the mineral laws and customs of the whole of the district called the King's Field, and also all those parts of the hundred of High Peak, in which the Queen, in right of her duchy of Lancaster, is entitled to mineral duties, shall from the passing of the Act (7th August, 1851), be the following, being such as are mentioned and comprised in the 1st schedule of the Act, which by the 1st section is made part of such Act, and that no other alleged custom or practice shall prevail. By sec. 56 of the Act, however, the steward and grand jury at any great barmote court have power to make such new and additional customs, articles, rules, and orders, as to them shall seem expedient for the better regulation of the working and carrying on of the mines within

(i) 1 Pilkington's Derbysh. p. 110, 111.



the district under the provisions of the Act, and for the guidance and protection of the mines, in reference to the working and carrying on of mines within such district, and also for regulating the practice and proceedings of the great and small barmote courts, or of any views or other proceedings, and for the execution of any process of such courts, and in relation to any of the provisions of the Act, or of the articles and customs thereby established (k).

It is, however, by the 57th section provided, that except as in the Act is provided, nothing therein contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, powers, or authorities vested in or enjoyed by the Queen, her heirs and successors, either in right of her crown, or in right of her duchy of Lancaster.

The twenty-eight laws and customs, as contained in the Act, are here subjoined, for the benefit both of the miner and legal practitioner, together with such notes, comments, and references as a full consideration of this subject has suggested to the author.

It must, however, be borne in mind, in construing the following articles, that the 2nd section of the Act declares that the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context of the Act or articles repugnant to such construction; that is to say,

The word "steward" shall mean deputy steward:

The words "county court" shall mean any county court having jurisdiction over any part of the district over which the barmote courts have jurisdiction by this Act:

The word "gift" shall mean the setting out by the barmaster of any ground in manner hereinafter provided:

The word "founder" shall mean the point at which a vein of ore shall be first found; and the words "founder meers" shall mean the two first meers to be set out to the finder under the provisions of this Act:

The words "mine or mines, vein or veins," shall mean a mine or mines, vein or veins, of lead ore, and shall include parts of or shares in any mine or vein as well as entire mines and veins, and all minerals containing lead ore:

The word "ore" shall mean lead ore and belland exclusively:

(k) As to the manner in which the rules, customs, &c., are to be made, see *post*, pp. 26, 27, 28.

The word "barmaister" shall include deputy barmaisters :

The words "mineral property" shall include mines and veins of lead, and parts of or shares in any such mines or veins, and the works, rights, and appurtenances connected therewith, and also lead ore, and all tools, materials, goods, chattels, and effects used in searching for, getting, cleansing, or preparing lead ore, whether such tools, materials, goods, chattels, or effects be or be found in or upon any mine or works or elsewhere.

*A Schedule of Articles and Customs established by the  
14 & 15 Vict. c. 94.*

1. It is lawful for all the subjects of this realm to search for, sink, and dig mines or veins of lead ore upon, in, or under all manner of lands of whose inheritance soever they may be (*h*) (churches, churchyards, places for public worship, burial grounds, dwelling houses, orchards, gardens, pleasure grounds, and highways excepted) (*m*), but if no vein of ore be found, and the person making search discontinues it for fourteen days, the land must be levelled and made good by the person making the search

(*l*) This article declares it to be lawful for all the subjects of the realm to search for, sink, and dig mines, &c., upon, in, or under all manner of lands, of *whose inheritance soever they may be*. The universality of this expression must, in construction, be restrained within the bounds as limited by the preamble of the Act, which states that all the subjects of this realm have from time immemorial had or claimed a right to search for, &c., mines within the *King's Field*, or, in other words, within the territorial jurisdiction of the Act. It is, however, to be regretted, that the article under comment was not more guardedly worded; as the true custom undoubtedly was, that all the liege subjects of the realm might get lead ore in the *King's Field*, whether in the hundred of High Peak or in the *soak* or *wapentake* of *Wirksworth*, as well within the grounds and soil of any person or persons whomsoever within such district, as in the *King's grounds* or *soils* there. *Gilbert v. Tomison*, 4 D. & R. 222.

By article 5, *post*, p. 13, the miner must in all cases before he commences any search or uses any land, make fences sufficient for the protection of cattle from any injury which might arise from his operations, and keep such fences in sufficient repair.

(*m*) From the operation of the 1st article (except conditionally, as appears by the proviso to such 1st article) are excepted churches, churchyards, places of worship, burial grounds, dwelling houses, orchards, gardens, pleasure grounds, and highways. This exception in its extent is much larger than that enjoyed under the repealed customs, by which the sites of *houses, churches and churchyards, gardens, orchards, and highways* were alone excepted. The validity

within the space of six days after the expiration of the said fourteen days, or the owner of such land may level and make good the same, and recover the expenses thereof from the miner in an action of debt in the small barmote court, or in the county court (n): Provided always, that nothing herein contained shall prevent or hinder the miner from following and working his vein, and searching for and getting lead ore under such excepted places as aforesaid; but in case by so doing he shall damage or injure any such excepted places or the surface thereof, the owner or reputed owner and occupier may recover from such miner compensation for such damage or injury, by action in the county

of this repealed custom and exception were relied upon on *Gilbert v. Tomison*, 4 D. & R. 222, which case is valuable, inasmuch as the court of Queen's Bench put a construction upon the word "*gardens*," which no doubt it would receive at the present day, were the same point the subject of litigation. The case was trespass for breaking and entering certain closes of the plaintiff called the *Fountain Gardens*, situate in the parish of Matlock, in the county of Derby, for the purpose of mining.

The defendant pleaded first, not guilty, and secondly, an ancient custom for all the liege subjects of the realm to get lead ore in the soak or wapentake of Wirksworth, as well within the grounds and soil of any person or persons whomsoever within the said soak or wapentake, as in the King's grounds or soils there (the sites of houses, churches and churchyards, orchards, gardens, and highways excepted), and that defendant, being a subject of the realm, broke and entered the closes in question, being parcel of the said soak and wapentake, and not being the sites of houses, churches, churchyards, orchards, gardens, or highways, to search for lead mines therein according to the custom. The replication took issue in the first plea, and then averred in answer to the second, that the gardens in question were within the exemption of the custom, and tendered issue thereon. At the trial it was proved that the *locus in quo* was planted with shrubs within the preceding six years, and with potatoes just before the trespass. And upon motion by the plaintiff, notwithstanding it was urged upon the court that the evidence was too slight to bring the *locus in quo* within the exception of the custom, which it was said must be limited to ancient gardens, and not extended to such as are obviously made in modern times for the purpose of evading the operation of a custom which is for the public benefit, yet the court held that it *was a garden* within the meaning of the exception.

(n) Although the small barmote court and the county court are alone mentioned, yet where the damages shall amount to fifty pounds, and so give jurisdiction to the superior courts at Westminster, the person so injured may, if he choose, bring his action therein. See sections 32, 46, 55, &c.: also the concluding proviso of article 1 gives compensation for the injury therein mentioned by action in the county court, if the damage shall not exceed fifty pounds, or otherwise by action in the superior court.

court if the damage shall not exceed fifty pounds, or otherwise by action in the superior courts; but in case the owner or reputed owner or occupier of such excepted place as aforesaid apprehends that such working will endanger the security of such excepted places, the steward and grand jury shall have power to suspend the working of such vein, or to direct the working thereof, so as to prevent such damage.

2. In all cases the landowner shall have power to sell and dispose of the calk, feagh, spar, and other minerals (o), and rubbish (except lead ore) (o), and to remove the same from his land so soon as the lead ore has been extracted from it, when and as often as he thinks proper (p), and when not required for the use of the mine, but not so as to destroy or injure any mineral property (q), without the consent of the barmaster and any two members of the grand jury (r).

3. The barmaster and every deputy barmaster shall provide a dish or measure which shall contain fifteen pints of water, and be adjusted in the presence of two of the grand jury, for measuring the ore, and they shall forfeit the sum of two pounds every time they are required to measure ore of any mine and are unprovided with such dish or measure, such penalty of two pounds to be recovered and received for his own use by the person who shall have required the ore to be measured, by an action in the county court (s).

4. The barmaster, together with two of the grand jury, shall

(o) This power of disposing of all minerals except "lead ore" may lead to some confusion and litigation; for although the calk, feagh, spar, &c., are base minerals so far as regards the extraction of lead, yet the words "lead ore" are by the interpretation clause to be construed as *lead ore and belland* exclusively, thus leaving it doubtful whether bing, peazy ore, smytham, &c., can by a strained construction be held to be included within the term "lead ore," for they certainly are not "*belland*."

(p) Although the landowner has in all cases power to sell and dispose of the calk, &c., yet the Act is silent as to whether he may retain the proceeds for his own use, or as a trustee for the miner.

(q) As to the meaning of the words mineral property, see interpretation clause, *ante*, p. 9.

(r) This article is to be read in connection with article 5, by which the miner is entitled to the exclusive use of a certain quantity of surface land for the purpose of laying rubbish, dressing his ore, briddling, making meers or ponds, and conveying water thereto, and any other mining purposes.

(s) The dish or measure provided by this clause will prevent many of the disputes that have hitherto arisen; the legal capacity of the

provide the miners a way, either for foot passengers or carts as may be required, from the nearest highway to the mine, and also from the mine to the nearest running stream, spring, or natural pond of water, such ways to be set out in as short a course as may be practicable and reasonable. No compensation is to be claimed by the occupier or landowner for such ways, but such ways are not to be considered public, and the use thereof is to be limited to persons and purposes connected with the mine, and all rights of way are to cease when the mine shall be no longer worked. The parties entitled to use the way may make sufficient ways for use, and keep the same in repair, and may also use for mining purposes the water from the nearest running stream, spring, or natural pond (f).

5. Every miner shall, so long as his mine shall be worked, be entitled, without making any payment for the same, to the

dish having several times been the subject of inquiry and oftener of litigation. See *Attorney-General v. Wall*, 4 *Brown's P. C.* 665.

The brazen dish, by which the wooden measures used for measuring the ore in the Low Peak were accustomed to be regulated, was kept at Wirksworth, and appears, from the following inscription upon it, to have been cast in 1512, in the reign of King Henry VIII. :—

“This dish was made the iiii day of October the iiij yere of the reigne of Kyng Henry the viij before George Erle of Shrowesbury Steward of the Kyngs most Honourable household and also Steward of all the honour of Tutbery by the assent and consent as well of all the Mynours as of all the Brenners within and adioynning the Lordshyp of Wyrkysworth Percell of the said honour This Dishe to Remayne In the Moote Hall at Wyrkysworth hanging by a Cheyne so as the Mchautes or Mynours may have resorte to the same at all tymes to make the trew Mesure at the same.”—1 *Pilkington's Derbysh.* p. 101.

(f) This article does not empower the miner to taint or injure the stream, by washing his ores therein, or otherwise using it. In Cornwall damages have been constantly recovered for so doing. The article guardedly says that the miners “may use the water from the nearest running stream, spring, or natural pond,” but does not confer any privilege that at all derogates from any vested legal right to such stream, &c.; it is therefore difficult to say how small a boon has been granted to the miners by this clause.

By the fourth schedule of the act the following fee in relation to the 4th article, is thereby allowed to the barmaster and deputy barmasters, such fee to be a debt due from the person on whose behalf the duties shall be performed, and to be paid either to the barmaster or his deputy, according as to the duty shall be actually performed by him or his deputy :—

Setting out any way under the 4th article - - 5s. 0d.  
See also the Fees of the Grand Jury.

exclusive use of so much surface land as shall be thought necessary by the barmaster and two of the grand jury and be set out by them, for the purpose of laying rubbish, dressing his ore, briddling, making meers or ponds, and conveying water thereto, and any other mining purposes. The miner shall in all cases, before he commences any search or uses any land, make fences sufficient for the protection of cattle from any injury which might arise from his operations, and keep such fences in sufficient repair (u).

6. Any person may transfer his interest in any mine or vein to any other person by causing an entry of such transfer to be made by the barmaster in the book to be kept by him as mentioned in the fourteenth section (v), and such transfer, when so entered, shall be valid and effectual.

(u) The privilege vouchsafed to the miner by this article is a substantial one, as he is not liable to pay compensation for the surface land taken for the purposes of his mine. This article also gives the miner power to lay the rubbish, &c. upon such surface land, and to some extent controls the general power given to the landowner in article 2, *ante*, p. 11, with which it must be read.

By the 4th schedule of the Act the following fee, in relation to the 5th article, is thereby allowed to the barmaster and deputy barmasters, such fee to be a debt due from the person on whose behalf the duties shall be performed, and to be paid either to the barmaster or his deputy, according as the duty shall be actually performed by him or his deputy.

Setting out land under the 5th article - - - 5s. 0d.

The fees payable to the grand jury will be found in the 3rd schedule.

(v) The barmaster's book is described in the 14th section of the Act, and not the 14th article. The Act should, however, have provided that such barmaster's book should be received in all courts as *prima facie* evidence only of the truth of the matters therein contained. However, the article declares that the transfer when so entered shall be valid and effectual; but such a declaration can be only justified upon the impossible assumption that the barmaster is, both physically and morally, incapable of making an erroneous entry. It seems that by writ of mandamus the barmaster would be obliged to enter any transfer presented to him; and when so entered, as before stated, the transfer becomes valid and effectual. This article will, doubtlessly, soon receive a judicial construction. Manlove, on the authority of 16 Edw. 1, art. 34, and 3 Edw. 6, art. 1 & 6, states the custom as to transfer thus—

“ By word of mouth eke any miner may,  
Such fee and freehold freely give away.”

*Fees.*—By the 3rd schedule of the act the barmaster is entitled to the following fees in respect to a transfer—

	s.	d.
Entry of every transfer for each vein - - -	1	0
Copy of same - - - - -	1	0

7. When ore (*w*) has been raised by any miner, and he shall desire such ore to be measured, the miner shall give the barmaster twenty-four hours notice of the time he intends to measure; and if the barmaster neglect or refuse to attend, then the miner may employ any two persons, one of them being on the grand jury, who shall measure such ore and lay the duties aside, for the use of the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, for the use of Her Majesty and her successors (*x*).

8. No person shall sell any ore (*y*), or remove any ore from the mine, unless and until the same shall have been measured by the barmaster, or by such two persons as aforesaid (*z*) in the event of the non-attendance of the barmaster (*x*), upon pain of forfeiting the full value thereof to the lessee of the duties of lot and cope, or if there shall be no such lessee, then to Her Majesty or her successors; and in case of nonpayment of such value, after six clear days notice requiring the same shall have been given by the barmaster to the miner, or affixed in or upon some part of the mine or the works thereof, the mine at which such ore was got shall be forfeited to the lessee of the said duties, and if there shall be no such lessee, then to Her Majesty and her successors (*a*); and possession thereof may be recovered in manner hereinafter provided (*b*).

9. The duties heretofore called the duties of lot and cope are and shall be payable to Her Majesty and her successors, or to her or their lessee for the time being. The duty called lot is and shall be one thirteenth part of all ore raised within the ju-

(*w*) A similar article to the above was instituted in the 3 Phil. & Mar: art. 6; it, however, was not so specific as to the length of notice to be given to the barmaster. This is the first article in which the duties of lot and cope are specifically mentioned. The 3rd article describes the dish by which such duties shall be ascertained, and the 9th article ascertains the proportion that the duties of lot and cope bear to the bulk of ore raised. The penalty for selling the ore without measurement is stated in the 8th article.

(*x*) By the interpretation clause, *ante*, p. 8, the word "ore" is held to mean lead ore and belland exclusively.

(*y*) For the meaning of the word "ore," see *ante*, p. 8.

(*z*) Article 7, *supra*.

(*a*) This article merely states the penalty for selling or removing ore until the same shall have been measured; the necessity of measuring has been laid down by the preceding article.

(*b*) The mode of recovering possession is alluded to in article 12, and made the subject of article 16.

jurisdiction of the barmote courts as hereby declared and established, such thirteenth part to be set apart and taken by the barmaster when he measures any ore; and the duty called cope is and shall be the sum of fourpence for every load of ore measured at any mine within the jurisdiction aforesaid, the measure of such load being nine dishes of ore, whereof each dish shall be of capacity sufficient to hold fifteen pints of water (c). The said duties of lot and cope are and shall be payable in addition to the payments mentioned in any other article comprised in this schedule. And if any person shall neglect or refuse to pay the said duty of cope, the same may be recovered by the barmaster, on behalf of Her Majesty and her successors, or of her or their lessee for the time being, by action of debt in the small barmote court, or by action in the county court (d).

10. If any new vein (e) be found by any miner or any other person whatsoever, the first finder shall be entitled to two meers in length (f) of the said vein, one meer on each side of the founder (g) to be measured and set out by the barmaster, in the presence of two of the grand jury, on the surface of the ground, within six days after notice given to him by the finder, and the third meer shall belong to the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee then

(c) The duties of lot and cope, though of very great antiquity, yet varied much in different parts of the Peak. By this article, however, the payment of such duties throughout the district within the jurisdiction of the Act is made uniform. It should be observed that the article ordains that lot is a certain part of all ore *raised*. As no mention is made of dressing or making it merchantable, so the miner is relieved from the necessity of so doing. The portion payable by virtue of article 26 is expressly required to be dressed and made merchantable. For the interpretation of the word "ore" see *ante*, p. 8.

(d) This article does not provide a specific remedy for the recovery of lot, except that by the 7th article it is with cope as "duties" directed to be laid aside for the use of the Queen or her lessee. Although in the present article the remedy for non-payment of cope is either in the small barmote court or county court, yet, if the amount due be fifty pounds it may be recovered in the superior courts at Westminster. See article 1, n. (c), *ante*, p. 10; and *post*, article 26, n. (a).

(e) The vein must not be in a garden, orchard, &c. (see *ante*, article 1, p. 9), and means a vein of lead ore and all minerals containing lead ore. See *ante*, p. 8.

(f) Although this is the first article in which the word "meer" is mentioned, yet the content of a meer is not given until the 18th article, to which reference must be made.

(g) The "founder" is that point at which a vein of ore shall be first found.



to Her Majesty and her successors, to be set out in like manner at either extremity of the said two meers at the option of the barmaster; and the finder shall be entitled to each subsequent meer in such vein, each way, to the extent he shall claim or require at the time of freeing (*h*). The founder, (*i*) meers, and the barmaster shall enter the particulars of the gift (*j*) in his book (*k*), and if the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, then if Her Majesty or her successors, neglect or refuse duly and reasonably to work the meer so set out to such lessee or Her Majesty or her successors as aforesaid, the finder shall have the right to purchase the said meer at such price as the steward and grand jury may fix and determine, or the finder may continue and maintain his workings through the said meer, upon laying aside for the use of the lessee or Her Majesty, as the case may be, all the ore that may be gotten therein, after deducting the expenses of getting the same.

11. The barmaster shall not set out any ground under the tenth article until ore shall have been raised from the mine for which such ground shall be required, nor until there shall have been paid to the lessee for the time being of the duties of lot and cope, or if there shall be no such lessee, to Her Majesty and her successors, the first customary payment due to him, her, or them, such first customary payment being so much ore

(*h*) The expression "freeing a vein" is here for the first time mentioned; it is, however, defined in the 11th article.

*Fees.* By the 3rd schedule the barmaster is entitled to the following fees in respect of *freeing* :—

	<i>s.</i>	<i>d.</i>
Entering each freeing - - - - -	1	0
Copy of same - - - - -	1	0
Entry of gifts for each vein - - - - -	2	0

(*i*) The word "founder" is, by the 2nd section of the Act, to receive the following interpretation, unless there be something in the context of the Act repugnant to such construction:—The word "founder" shall mean the point at which a vein of ore shall be first found; and the words "founder meers" shall mean the first two meers to be set out to the finder under the provisions of the Act.

(*j*) The word "gift" is, by the 2nd section of the Act, to receive the following interpretation, unless there be something in the context of the Act repugnant to such construction:—The word "gift" shall mean the setting out by the barmaster of any ground in manner thereafter provided.

(*k*) This clause is unintelligible: probably it means that the barmaster shall enter the particulars of the gift of the founder meers in his book.

as shall be sufficient to fill the dish or measure mentioned in the third article, and being called the freeing dish (*l*); and the miner shall pay to the lessee for the time being of the said duties, and if there be no such lessee, to Her Majesty and her successors, a similar dish of ore for every third and subsequent meer which he shall reach of the vein in which he is working (*m*).

12. If any miner shall work any mine or vein without having duly freed the same as provided by the eleventh article, or shall commit any trespass in any meer belonging to the lessee of the duties of lot and cope, or to Her Majesty and her successors, the mine or vein which shall have been so worked without having been freed, or the mine or vein of which the meer in which such trespass shall have been committed shall form a part, shall be forfeited to the lessee of the duties of lot and cope, and if there shall be no such lessee, then to Her Majesty and her successors, and possession thereof may be recovered on behalf of such lessee or of Her Majesty and her successors, as the case may be, by action of title in the small barmote court in the name of the barmaster (*n*).

13. If any vein shall cross another vein, the miner who comes to the pee or intersection first shall have such pee or intersection, and may work therein as far as he can reach with a pick or hack, such pick or hack having a helve or shaft three quarters

*Fees.*—By the 4th schedule of the Act the following fee in relation to the 10th article is thereby allowed to the barmaster and deputy barmasters, such fee to be a debt due from the person on whose behalf the duties shall be performed, and to be paid either to the barmaster or his deputy, according as the duty shall be actually performed by him or his deputy:—

Setting out meers, for each meer subsequent to the third meer, under the ninth article - - - - - 4d.

For the fees of the grand jury, see 3rd schedule of the Act.

(*l*) This article defines the freeing dish, and declares that it shall be of the same capacity as the lot dish mentioned in article 3. For penalty of working without having previously freed, see article 12.

(*m*) As by this article the miner is to pay for every *third* meer which he shall reach, &c., so he is liable to pay if he works the lessee's meer, which by the 10th article is to be the third set out by the barmaster.

*Fees.* For the barmaster's fees for entering a freeing, for a copy of the same, or for an entry of a gift of a vein, see *ante*, p 16.

(*n*) This article provides remedies for the neglect of certain duties, &c., and declares that the damages, &c., shall be recoverable in the small barmote court: if, however, the amount justifies it the suit should be commenced in the superior courts at Westminster. See article 9, n. (*d*).

of a yard long, so that he stands wholly within the cheeks of his own vein when he works such pee or intersection (o).

14. When two veins approach each other but are parted with a rither, and such veins continue asunder for one meer or further in length without any joint of ore or other mineral crossing the same (such joint of ore or other mineral not being a new vein), and the rither during that distance in all parts exceeds three feet in thickness, then they are to be considered and treated as two distinct veins so long as they so continue asunder, but whenever they again meet, the elder or prior title shall take the vein (p).

15. In any dispute where the priority of title shall come in question the longest continued ownership shall prevail, but all gifts from the barmaster shall be considered as the origin and commencement of the title, and workmanship prior to such gift (if any) shall not avail; and in all cases the jury on the trial shall decide the fact of such priority (q).

16. If any person shall claim title to any mine, the claimant may commence an action in the small barmote court, by causing a plaint to be entered in the book mentioned in the fifth section; and if any miner shall commit a trespass in the mine or vein of any other person, the person aggrieved may commence an action in the small barmote court, by causing a plaint to be entered in an action of trespass, and may proceed to trial in the small barmote court, and shall there recover possession of the said mine in the action of title, or damages to be assessed by the jury for the said trespass; and any person claiming a debt against a miner for articles furnished to a mine, or for mining purposes, or for work or labour in, upon, or in respect of any mineral property, may cause a plaint to be entered in an action of debt, and shall annex the particulars of his debt to the summons, and proceed to trial in the small barmote court, and shall there recover such amount, if any, as upon proof shall appear to be due to

(o) This article refers merely to the right of working the intersection of a cross vein. The following article 14 has relation to approaching but unconnected veins, and article 27 to the consolidation of contiguous or connecting veins.

(p) This article defines whether or not two approaching veins, but parted by a rither, shall be considered as one vein. As to the consolidation of contiguous or connected veins, article 27 must be consulted. As to priority of title see article 15.

(q) This article has no reference to the transfers mentioned in article 6, as to which see the notes to that article. Article 16 provides the mode of trying titles.

him (r) ; but no evidence shall be admitted of any items in an action of debt not mentioned in the particulars annexed to the summons.

17. No miner or other person shall, except as herein-after mentioned, bring more than one action of title to recover the same mine, and a nonsuit shall be deemed of the same effect as a judgment for the defendant; but in actions of trespass or debt the plaintiff, if nonsuited, shall be allowed to commence a fresh action : provided always, that the steward shall in any case whatever, whether of title, trespass, or debt, have the power, if he shall think fit, to order a new trial to be had, upon such terms as he shall think reasonable, and in the meantime to stay the proceedings (s).

18. Every meer of ground shall contain thirty-two yards in length ; and the miner shall be entitled to take and have set out for him any proportion of a meer, upon freeing the same, by

(r) Sections 6, 7, 15, & 16, establish the territorial jurisdiction of the small barmote courts and other general matters, but it is this, the 16th article, which specifically treats of the subjects over which such courts have jurisdiction, which will be observed to be only such matters of contract, quasi-contract, or delict, as are immediately concerned with mines and mining. For forms of proceeding &c. see *post*, p. 108. Many of the articles, however, give the county and superior courts of Westminster in respect of some matters concurrent, and in respect of others exclusive, jurisdiction. The practitioner must therefore consult each article in order to ascertain the court in which he should seek redress. As to the interpretation of the words "mineral property," see *ante*, p. 9.

(s) Probably there may be good reason for this article : it is, however, strange that it should restrain every person from bringing more than one action of title to recover the same mine, and also declare that a nonsuit shall be deemed a judgment for the defendant. In the High Peak, as in the rest of the kingdom, a title at one time defective may, either by lapse of time, or by the happening of an almost infinite variety of human events, become good, and yet the unfortunate suitor, having once failed in substantiating his title, is thereby for ever precluded. It is vain to say that the discretion as to granting a new trial, vested in the steward by the proviso, can be compared with the common law right of trying questions of title as often as the claimant may choose, especially as any abuse of such privilege is fully guarded against, not only by the infliction of costs, but also by the powerful and absolute interposition of a court of equity. As the article has also relation to "*miners or other persons*," it is feared that some inconvenience will arise from this generality. It is suggested that the clause should have had relation to miners alone, and merely have prevented more than one action by the same person *on the same title*, altogether omitting the new and dangerous notion

payment of an amount of ore proportionate to the amount payable upon freeing a whole meer (*t*).

19. The barmaster, if he finds any mine or vein neglected and not wrought, and not hindered by water or for want of air, shall, if required so to do by any person or persons, send to the owner or reputed owner, where known to him, and if not known to him, then put up in some conspicuous place within the liberty, in which the mine or vein is situate, a notice that such mine or vein will, at the expiration of three weeks, if not duly and reasonably worked to the satisfaction of the barmaster and grand jury, and no other sufficient reason assigned to them, be forfeited: and if at the expiration of the said three weeks the mine or vein is not so worked, the barmaster, in the presence of two of the grand jury, may give such mine or vein to any person or persons willing to work the same; provided that nothing herein contained shall authorize the barmaster to give away such mine or vein if the owner thereof be unable to work the same by reason of such mine or vein being under water, or for want of air, so long as the owner thereof is using efficient and diligent means to the satisfaction of the barmaster and grand jury to relieve such mine or vein (*u*).

of a nonsuit. Manlove in his poem, upon the subject of trying a non-suited plaintiff in an action of title says—

“And if the plaintiff chance non-sute to be,

He payes a noble for a penalty;”

the mildness of which custom may be agreeably contrasted with that substituted by article 17.

By article 21, the action of title for recovery of a mine must be brought within three or six months, according to the nature of the case.

(*t*) This article has been descanted upon in the notes to article 10, to which the student is referred. As to freeing a meer and the penalty upon neglect, see articles 11 and 12, and notes thereto.

(*u*) This article is but a reconstitution of an almost similar custom which was promulgated in the 3rd Edw. 6, which Manlove describes as follows:—

“Then the Burghmaster may the Stowes remove

And he that set them loseth the same grove:

Unless the work by water hindered be,

Or else by wind; the miner then is free

From losing any meer of ground or grove

For then such Stows none ought for to remove.”

As to the power of any person to unwater or give relief to another's mine, by means of a sough engine or other means, see article 26, *post*, p. 24. As to the necessity of working a consolidated vein, see article 27, *post*, p. 25.

20. If any person has shares in a mine, and refuses to join his partners or the owners of the other shares in working the same, or to pay his proportion of the expenses of working the same for the space of six days after the same has been demanded by the party complaining or his agent, he shall forfeit his part and share to his partners, who shall be entitled to recover the same against such defaulting owner in an action of title in the small barmote court, and the only evidence necessary in such action to enable the plaintiff to obtain judgment shall be proof that the plaintiff has worked the said mine, and the amount of the expenses incurred, and a demand of payment of defendant's share thereof as aforesaid, and the neglect or refusal of defendant to pay it for the space of six days after the demand; and it shall be no defence to such action that the plaintiff is partner or joint owner with the defendant in the mine or shares sought to be recovered (v).

21. If any person be possessed of any mine, and be working the same, and any other person claim title thereto, such claimant shall, within the space of three calendar months next after he shall have had notice of the same being in open workmanship, and at all events within six calendar months after the same shall have been in open workmanship, whether he shall have had notice or not, assert his claim by an action of title in the small barmote court, or else such claim shall be barred (w).

22. If the barmaster shall, in any matter connected with the duties of his office, require a view to be made by the grand jury, or if the plaintiff or defendant in any action of title or trespass in the small barmote court, or if any miner or other person shall for any purpose require a view to be made of the mine or works

(v) This article provides, that on the default of a partner or shareholder, his companion may recover against him his share of the mine. It does not give a right of action against such partner, &c., for his share of the expenses; such a right, it is presumed, would have been more valuable than that given, as a partner will never or seldom allow himself to become a defaulter, so long as his interest in the mine shall be greater in amount than his liability. The custom as stated in the article is however in accordance with Manlove, who says, that the jurisdiction of the great barmote courts was, amongst other things,

“To order Grovers, make them pay their part,  
Joyn with their-fellows, or their grove desert.”

(w) The 16th and 17th articles refer to the court, &c., in which possession of a mine is to be sought, to which, and to the note appended, reference must be made.

of any person whomsoever, then and in each and every of such cases a view shall be made, and the person so requiring a view shall, when the grand jury are assembled, deliver to the steward a bill of directions describing the mine or particular part or parts of a mine, or ground, or works, or other matters or things, which the grand jury are required to view, and stating the question upon which their opinion is required, but such bill of directions shall contain no argument or comment whatever, and thereupon the steward shall openly read the said bill of directions to the grand jury, and, if the same is in the opinion of the steward properly framed, deliver it to one of the grand jury, who shall take the same with him for the guidance of himself and the rest of the grand jury in making their view (x), but if any person affected by the said proceeding, object to the said bill of directions or to any cross bill delivered as herein-after mentioned as containing matter of argument, assertion, or comment, not being a description of the mine, ground, or works, or other matters or things to be viewed, or a statement of the question necessary for the guidance of the grand jury in making their view, the steward before delivering the bill or cross bill to the grand jury shall in all cases decide upon the validity of such objections, and if he thinks the same well founded shall cause the bill or cross bill to be altered and corrected in such manner as the steward shall think right, and after making such view, such of the grand jury as shall concur in opinion shall in answer to such bill and cross bill, if any, write their opinion and sign it, and such of the grand jury as shall not concur in opinion with any of their fellow jurymen shall write separate opinions and sign them, so that the signature of each of the grand jury shall be affixed either to his own separate opinion or to that of himself and some other or others of the said grand jury; and the said bill and cross bill, if any, with the opinions, shall be delivered to the steward, who shall thereupon openly read the same in the presence of the grand jury and of the person or persons who shall have preferred such bill or cross bill; and such bill and cross bill, if any, and the opinions thereon, shall be kept by the steward with the docu-

(x) This article, and also Nos. 23 and 24, have relation to the practice of views by the grand jury, the forms applicable to which will be found *post*, pp. 47, 48.

As to the fees due to the steward, grand jury, and other officers, on each view, see the 3rd and 4th schedules of the Act in the appendix.

ments of the barmote courts, but the steward shall, if required by the plaintiff or defendant in the action in which the view shall have been had, permit such bill and cross bill, if any, and the opinions thereon, or either of them, to be used by such plaintiff or defendant for the purpose of evidence on the trial of the action: provided always, that no plaintiff or defendant in any action shall be entitled to require a view, unless he shall have given notice thereof in writing to the barmaster six clear days at the least before the day appointed for the trial; and the expenses of views shall be paid in manner herein-after mentioned, that is to say, in cases where the barmaster shall require such view, the expense shall be borne by the owner of the mine or other matter to be viewed, provided the steward shall consider that such view was properly required by the barmaster, and shall allow such expenses; and in cases where the view shall be required by a plaintiff or defendant in any action, the expenses of such view shall be costs in the cause, and abide the event of the action; and in all other cases the expenses shall be paid by the person requiring the view, if no cross bill is presented, and if a cross bill is presented, then in equal proportions by the person requiring the view and the person presenting the cross bill. Any person who may be affected by the proceedings at any view may appoint a shower to accompany the grand jury, and to show on his behalf the place to be viewed.

23. Any person who may be affected by the opinion of the grand jury on any view may, if he thinks fit, at the same view deliver a bill of directions to the said grand jury, which second bill shall be called a cross bill of directions, in similar form to the original bill, stating the question on which their opinion is requested; and the steward shall in like manner, immediately after reading the original bill, read over such cross bill, and deliver the same to one of the grand jury to take to the mine or ground for the guidance of himself and the rest of the grand jury (y).

24. When a bill of directions and also a cross bill shall be delivered to the grand jury at the same view, it shall not be requisite for them to write their opinions until they have completed the view on the cross bill, unless they think proper to do

(y) As to the practice on bills and cross bills of directions, see articles 22—24; and for forms, &c. see *post*, pp. 47, 48.



so; and in no case shall it be competent for the grand jury to examine any evidence produced by either party (z).

25. If any person shall obstruct the grand jury in viewing any mine or works, the grand jury shall state such fact in writing, and return such writing, signed by any one or more of them, together with the bill of directions, and cross bill, if any, to the steward; and the person so obstructing shall forfeit, by way of penalty, such sum not exceeding twenty pounds, as the steward shall think fit to impose, and the steward shall have power to impose a fresh penalty every day on which such obstruction is repeated; and if any such penalty be not paid within three days after the same shall be imposed, the steward shall issue his warrant for levying the same. Before imposing any such penalty, the steward shall give to the offender seven clear days notice to show cause, at a time and place situate within the hundred of the High Peak, to be named in such notice, why a penalty should not be imposed (a).

26. If any person (b) shall, by virtue of any sough engine or other means, unwater or give relief to any mine or vein which

(z) As to the practice on bills and cross bills of directions, see articles 22 and 23; and see *post*, pp. 47, 48.

(a) Beside warrant and distress mentioned in this article, the 47th section of the Act declares, that if the offender have none or not sufficient mineral property within the jurisdiction upon which to levy the penalty, that he may be proceeded against in the county court for the whole or part, as the case may be; such section also states the evidence that shall be sufficient to support such an action, see *post*, pp. 96, 97.

The following is a form of a notice directed by the Act to be given to the offender, in pursuance of the twenty-fifth article.

You are hereby required to attend at — on the — day of — before the steward of the High Peak barmote courts, to show cause why a penalty should not be imposed upon you for obstructing the grand jury on the — day of —.

Given under the seal of the court, this — day of — 185.

A.B., Steward.

(b) In the mineral fields in the wapentake of Wirksworth, and probably in the whole mineral district of Derbyshire, it has long been usual for certain adventurers to construct soughs or levels for the purpose of draining, they being remunerated by agreement with the proprietors of the mines, by a portion of the lead ores raised

may be under water, and the further working thereof be hindered, the owner of any such mine so relieved shall, from time to time, so long as such relief be continued, deliver to the person giving such relief as aforesaid such part and portion of all the ore which at any time thereafter shall be got and raised in such mine or vein under the level at which such relief was given, as the barmaster and grand jury may, from time to time, fix and determine; such part and portion of the said ore to be delivered and dressed and made merchantable by the owner of such mine, without any fraudulent concealment or wilful diminution, and to be discharged and free from all charges in getting and dressing; and the value of such ore, if it shall not exceed fifty pounds, shall be recoverable in the county court, or, if such value shall exceed fifty pounds, in one of the superior courts at Westminster (c).

27. Any person having two or more veins lying contiguous to each other, or connected by any shafts, gaits, or ways, may, with the consent in writing of the barmaster or grand jury, consolidate the titles to such veins, and an entry shall be made in the barmaster's book to the effect that the titles to such veins are thenceforth consolidated, and the said veins shall from the time of such entry in the said book be considered and treated as held under one; and the new title of the said consolidated veins, and nothing herein contained, shall prejudice or affect the right or title of any person to any mine or vein which may have been heretofore united to or consolidated with any other mine or vein, and that the possession or working of any of the mines or veins in such consolidated titles respectively shall be considered as the working of the whole thereof, and so long as any part thereof be so worked the same shall not be liable to be operated upon by the barmaster in pursuance of the 19th article (d).

within the district benefited, technically called the title of the sough. *Arkwright v. Gell*, 5 M. & W. 203. It is to meet this usage that the present article has been framed.

(c) It will be remarked that the remuneration to be made to any person unwatering a mine is a portion of *all the* ore raised under the level; also the owner of the mine is bound to deliver it dressed and made merchantable. In article 9, by which lot and cope are described, the owner of the mine is not bound to deliver, or to make merchantable the ore forming such duties. See notes to art. 9.

(d) Contiguous and connecting veins differ in their nature from

23. If the grand jury shall be summoned to any view (e) by any person, not being plaintiff or defendant in any action in the small barmote court, for the purpose of delivering their opinion as to whether any other person is working in any mineral ground belonging to the persons so summoning the grand jury, and the majority of the grand jury assembled at any such view, (and) give it as their opinion that such is in all probability the case, but that for want of workmanship the fact does not yet clearly appear, it shall be lawful for the steward to require such other person to give to the steward security for the value of all ore which may be gotten in his workings thenceforth, until such time as sufficient working shall have been done to make the truth appear; and unless security shall be given unto and to the satisfaction of the steward, it shall be lawful for him to direct and authorize the barmaster to retain all ore gotten in the workings of such other person so failing to give security, until such security shall be given, or until sufficient further working shall have been done to enable the grand jury at any adjourned view to form a satisfactory opinion; and if the grand jury assembled at any such adjourned view, or the majority of those so assembled, shall state their opinion to be that the workings of the person originally summoning the grand jury and of such other person form one and the same title, the steward shall thereupon order the barmaster to deliver to the person who shall have originally summoned the grand jury the ore which shall have been so retained as aforesaid, or, if security shall have been given as aforesaid, then the person who shall have originally summoned the grand jury shall be entitled to the benefit of such security, to the extent of the value of the ore which shall have been gotten by such other person as aforesaid since the original view, and shall be entitled to use the name of the steward, if necessary, for enforcing such security, and if either party feels himself aggrieved, such party may prosecute his claim in the small barmote court.

Having considered in detail the twenty-eight articles and customs provided by the Act, it is convenient that the 56th section of the Act should be here introduced, as by such section cross or approaching veins, which are the subject of articles 13 and 14, to which reference must be made. As to fees, see the 3rd and 4th schedules to the Act, in the appendix.

(e) The practice as to views by the grand jury will be found detailed by article 22.

the steward and grand jury have power under certain restrictions to make new and additional customs, articles, rules, and orders. The section enacts that it shall be lawful for the steward and grand jury at any great barmote court to make such new and additional customs, articles, rules, and orders as to them shall seem expedient for the better regulation of the working and carrying on of the mines within the district under the provisions of this Act, and for the guidance and protection of the mines in reference to the working and carrying on of mines within the said district, and also for regulating the practice and proceedings of the great and small barmote courts, or of any views or other proceedings, and for the execution of any process of such courts, and in relation to any of the provisions of this Act, or of the articles and customs thereby established; and all such new and additional customs, articles, rules, and orders as aforesaid shall be certified under the hand of the steward and seal of the said court to the chancellor for the time being of Her Majesty's duchy of Lancaster, the same having been previously submitted to the lessee, if any, for the time being, of the duties of lot and cope, and approved of in writing by him; and the same shall be published for three weeks consecutively in some newspaper printed in the county of Derby; and such chancellor may, after such publication, either allow or disallow such view (f) and additional customs, articles, rules, and orders, or any of them; and such of the new and additional customs, articles, rules, and orders as shall be so allowed by such chancellor shall forthwith, after the approval thereof, be sealed with the seal of the said duchy of Lancaster, and laid before both houses of parliament (if parliament be then sitting, or if parliament be not sitting, then within five days after the next meeting thereof), and no such new or additional custom, article, rule, or order shall have effect until six weeks after the same shall have been so laid before both houses of parliament; and any new or additional custom, article, rule, or order so allowed and laid before parliament as aforesaid shall, from and after the expiration of such period of six weeks, be of the same force and effect as if the same had been enacted by authority of parliament, unless the same shall by vote or resolution of either house of parliament be objected to; and such new and addi-

(f) The word "view," although in the Act, should be read "new."

tional customs, articles, rules, and orders, shall be carefully preserved by the steward: provided always, that such new and additional customs, articles, rules, and orders shall not in any way affect the rights and interests of owners or occupiers of land.

The above section confers perhaps the most valuable privilege contained in the Act, as it affords a ready and sure means of correcting any inaccuracy in the wording of any of the above articles, several of which inaccuracies have been alluded to in their accompanying notes.

## CHAPTER II.

Having in the foregoing chapter given the mineral Articles and Customs provided by the Act 14 & 15 Vict. c. 94, we now proceed to treat of the second and third divisions of such Act: the former of which makes provision for the better administration of justice in the Barmote Courts of the hundred of High Peak, and the latter details the practice and proceedings of the said courts; both of which divisions will be considered in the following order.

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## SECTION THE FIRST.

The Queen, in right of her duchy of Lancaster, being seised of the hundred of High Peak, governs it by her chancellor and other officers of the duchy. As, however, it is usual to demise the interest of the Queen so far as regards the mineral duties, those powers relating to those duties which would otherwise be exercised by the chancellor, &c. devolve upon and are performed by the lessee. Thus—

1. If there be no lessee, the consent in writing of the chancellor of the duchy must be obtained to the appointment of deputy barmasters: sect. 9.
2. If there be no lessee, the chancellor may remove the deputy barmaster: sect. 11.
3. Receive penalties: sect. 50; art. 8.
4. It is necessary that he should seal any new or additional customs, articles, rules, and orders, to be made by the grand jury, &c., under the 56th section, and may allow or disallow them after publication.
5. The Queen is entitled to the duties of lot and cope, if they are not granted: art. 10.
6. Also entitled to the third meer, in the absence of a grant: art. 10.
7. Also entitled to the "freeing dish," in the absence of a grant: art. 11, 12.

The other powers exercised by the chancellor will be found by a reference to the index under the appropriate titles.

*Lessee of Mineral Duties.*—At present the Most Noble William Spencer, Duke of Devonshire, is the lessee of the

mineral duties within the jurisdiction of this Act by grant under the seal of the duchy of Lancaster, he and his ancestors having been lessees since 1690 (a).

The lessee has more extensive powers than those ordinarily conceded to crown lessees. Among the most prominent are—

1. His concurrence in the appointment of deputy barmaster : sect. 9.
2. His power of dismissing at pleasure the deputy barmaster : sect. 11.
3. His right to receive one moiety of penalties : sect. 50 ; art. 8.
4. His right to approve in writing of all new and additional customs, articles, rules, and orders, to be made by grand jury under section 56.
5. His right to the duties of lot and cope : art. 9.
6. His right to the third meer, art. 10.
7. His right to the "freeing dish" : art. 11, 12.

The remaining rights and powers of the lessee will be found by a reference to the index under the appropriate heads.

*Steward. Appointment.]* By section 3 of the Act, the Queen and her successors are empowered to nominate and appoint from time to time, by letters patent under the seal of the duchy of Lancaster a fit and proper person, being

A barrister-at-law of five years standing, or

A member of one of the inns of court who has practised as a special pleader for ten years, or

An attorney or solicitor of some of the superior courts of law or equity at *Westminster*, of seven years standing,

to be and to be called the "*Steward of the High Peak Barmote Courts.*" He is the most important officer appointed by the Act, his duties being, as will be seen hereafter, both judicial and ministerial. He has the barmaster and deputy barmasters as his inferior officers to execute his commands.

*Steward: Duties.]* The duties of steward, as before observed, are both judicial and ministerial. Besides his general power to see that this Act and the customs are obeyed, his duties by the 5th section are especially declared to be as follows :—

(a) *Attorney-General v. Wall*, 4 *Brown's P. C.* 635.



1. To receive and enter *plaints* in a book to be kept by him for that purpose (*b*).
2. To issue *summonses*, the steward's fee for which is 2s. 6d. (*c*).
3. To hold and preside at the "*great and small barmote courts*," of which the steward is the judge (*d*).
4. To issue *precepts* under his hand to the barmaster for summoning the attendance of the grand jury on views, and at the *great barmote courts*;  
and also *precepts* to the barmaster for summoning and empanelling jurors for the trials of causes at the *small barmote courts*.
5. To administer *oaths* to the barmaster, deputy barmaster, jurors, witnesses, or other persons, *at and out of the great and small barmote courts*. The steward's fee for swearing every witness in a cause is 1s. (*e*).
6. To preside as judge on the trial of causes at the *small barmote courts*.
7. To *tax costs* in all cases where, by stat. 14 & 15 Vict. c. 94, costs are or may be given.
8. To attend and preside at *views*, the steward's fee for which is 1l. 1s. and mileage (*f*).
9. To sign and issue *subpoenas* for the summoning of witnesses, the steward's fee for which is 2s. 6d. (*g*).  
and the *process* of the courts, both mesne and final.  
and all *rules and orders* of the courts,  
and *warrants* for enforcing the judgments of the courts,  
and levying penalties.
10. To make *returns* to writs of certiorari.
11. To *advise barmasters and grand juries and other juries* upon matters of law, and all other matters connected with their respective duties.

(*b*) As to the form of the entry, see 2nd schedule to 14 and 15 Vict. c. 94, app. and *post*, p. 54. The steward's fee for entering the *plaint* is consolidated in his 2s. 6d. fee for issuing the summons. See 3rd schedule to 14 & 15 Vict. c. 94.

(*c*) See 3rd schedule to 14 & 15 Vict. c. 94.

(*d*) See stat 14 & 15 Vict. c. 94, s. 15, which also enacts that the steward may, *out of court*, do all such acts of the courts respectively as do not require the presence of a jury. See *post*, p. 33.

(*e*) See 3rd schedule to 14 & 15 Vict. c. 94.

(*f*) See 3rd schedule to 14 & 15 Vict. c. 94, and *infra*.

(*g*) See 3rd schedule to 14 & 15 Vict. c. 94.

12. To *affix the seal* of the barmote courts to such documents as require the same (h).
13. To hear and determine applications to the courts which do not require the intervention of a jury, and to make orders thereon, upon such terms as to the payment of costs by either party, or otherwise, as may to him seem just (i).
14. To keep the *verdicts, judgments, books, and proceedings* of the great and small barmote courts, and the *seal* of the said courts, and also all *books and accounts* which are by the stat. 14 & 15 Vict. c. 94, provided to be kept and delivered to the steward by the barmaster, safe and in good condition, and to deliver up the same to Her Majesty and her successors whenever required.  
To appoint a *deputy steward* from time to time (k).
15. And *generally* to do and perform such other acts and duties as are in the Act 14 & 15 Vict. c. 94, mentioned as acts and duties to be performed by the steward.

N.B.—By the 3rd schedule the steward, over and above the fees specially mentioned, is entitled to mileage of 1s. a mile from his place of residence to the place where the court is held, such mileage in no case to exceed 1l.

By section 52 it is enacted, that no proceedings in the said courts or either of them, or before the steward or barmaster, shall be removed into any other court by *certiorari* or otherwise, except in the cases in such Act provided for (l).

By the 21st section it is provided, that if any person shall wilfully insult the steward at any time when in the execution of his office, the latter is empowered to impose upon any such person such penalty not exceeding ten pounds as the steward shall think fit, and the steward shall fix a day on or before which, and a person to whom, such penalty shall be paid.

*Fees.*] By the 49th section of the Act it is declared that the fees and payments which shall be paid, had, and taken by the

(h) A seal or stamp must be provided by the steward, with the words "The Seal of the High Peak Barmote Courts" thereon; and all proceedings in the great and small barmote courts which are required to be signed by the steward shall be sealed or stamped therewith. 14 & 15 Vict. c. 94, s. 8.

(i) See *ante*, p. 32, n. (d).

(k) See 14 & 15 Vict. c. 94, s. 4.

(l) See stat. 14 & 15 Vict. c. 94, s. 52.

steward shall be such as are contained in the 3rd schedule to the 14 & 15 Vict. c. 94, and that no other fee, gratuity, or reward whatever shall be demanded, had, or taken by the steward on any pretence whatever. The following is a list of the fees in such 3rd schedule, so far as it relates to the office of steward:—

*A LIST OF FEES to be allowed to the Steward on Taxation as contained in the 3rd schedule to the stat. 14 & 15 Vict. c. 94.*

	£	s.	d.
For attending view by grand jury - - - -	1	1	0
For entering every plaint, issuing every summons or subpoena - - - -	0	2	6
For swearing every witness in a cause - - -	0	1	0
For every warrant to deliver possession, or to levy any debt or damages, or money or costs, or penalty -	0	2	6
For a certified copy of any proceeding in the great or small barmots court - - - -	0	5	0
For copy of any entry or accounts - - - -	0	0	6
For any search amongst or examination of the documents in the custody of the steward - - -	0	1	0
Mileage, 1s. a mile from his place of residence to the place where the court is held, such mileage in no case to exceed 1l.			

*Steward: Liability of.]* The steward is not liable to any action for any thing done in obedience or necessary for obedience to any writ, warrant, precept, or process signed by him, and sealed with the said seal, if such writ, warrant, precept, or process be not an excess of his jurisdiction (m). The Act however does not, as it does by section 10 in the case of the barmaster, declare that the steward shall not be answerable for the acts of his deputy.

*Steward: Removal of.]* As by the 3rd section of the Act the steward holds his office merely during the will and pleasure of Her Majesty and her successors, he is at any time subject to removal, and therefore has no certain estate in his office.

*Deputy steward: Appointment.]* By the 4th section of the Act the steward is empowered, and therefore must appoint from

(m) See stat. 14 & 15 Vict. c. 94, s. 43.

time to time, a deputy steward, qualified to be appointed steward of the said court (n), to act for him at any time when he shall be prevented by illness or unavoidable absence from acting in such office; and such steward has the power to remove such deputy at his pleasure; but such deputy, while acting under such appointment, has the like powers and privileges, and is subject to the like provisions, duties, and penalties for misbehaviour, as if he were the steward of the court for the time being (o).

*Deputy steward: Duties.]* The deputy steward, as we have seen, must have the same professional qualifications for his office as the steward, his duties being the same; thus, the deputy is to act for the steward at any time when the latter shall be prevented by illness or unavoidable absence from acting in such office. Such deputy also has, while acting under such appointment, the like powers and privileges, and is subject to the like provisions, duties, and penalties for misbehaviour, &c., as if he were the steward of the court for the time being. Also, the interpretation clause of the Act (section 2) declares that, in construing the Act, the word "*steward*" shall mean "*deputy steward*," unless there be something in the context of the Act repugnant to such construction.

As to the non-removability of proceedings before the steward, except in certain cases, see *ante*, p. 33. Also, as to obstructing or insulting the deputy steward whilst in the performance of his duties, see *ante*, p. 33.

*Deputy steward: Fees.]* The fees incident to the office of deputy steward are those payable to the steward, a list of which see *ante*, p. 34.

*Deputy steward: Liability of.]* The 43rd section of the Act declares the extent of the steward's official liability, the provisions of which section apply also to the office of deputy steward (p).

*Deputy steward: Removal of.]* The steward, by the 4th section of the Act, has the power to remove his deputy at his pleasure (q).

(n) See stat. 14 & 15 Vict. c. 94, s. 3, and *ante*, pp. 33, 34.

(o) See also interpretation clause, *ante*, p. 8.

(p) See *ante*, p. 34.

(q) See *ante*, p. 33.

*Barmaster : Appointment.*] By section 9 of the Act, the Queen and her successors are empowered to appoint (by letters patent under seal of the duchy of Lancaster) a fit and proper person to serve the office of barmaster (*r*) of the district within the jurisdiction of the barmote courts (*s*), and to be called the "*Barmaster of the High Peak.*"

The barmaster may, immediately upon his appointment, act as such without being sworn, but must, before or at the great barmote court next after his appointment, be sworn well and truly to serve the office to which he is appointed, or such appointment shall be void (*t*).

*Barmaster : Duties.*] The office of barmaster is one of trust and confidence, in which there are personal duties to be performed independent of a jury. The duties of the barmaster are, by the 13th section of the Act, expressed to be as follows :—

To select persons to serve on the grand jury (*u*).

To execute all such *precepts and warrants* as shall be directed to him and signed by the steward, and sealed with the steward's seal (*v*).

To attend on *views* with the steward and deputy barmaster of the district in which the mine to be viewed is situate ;

and where there is no deputy barmaster appointed for any district, to *perform all the duties* of the office of deputy of district, until a deputy is appointed ;

and *generally to do and perform* such other acts and duties as are by the stat. 14 & 15 Vict. c. 94, mentioned as being acts or duties to be done or performed by the barmaster : which are, principally, to put miners into the possession of veins that they have discovered, and to collect the mineral duties due to the crown, its lessee, or the lord of the manor.

By section 52 it is provided, that no proceedings before the

(*r*) It would have been easy to have re-established the ancient orthography of this word. Any one of the words Barghmaster, Berghmayster, or Berghmaster, especially the last, would have been preferable to Barmaster, vulgarly called Barmer. The term Berghmaster is derived from the Sax. *berȝ*, i. e. mountain, the barmaster being master of the mountain of the Peak. *Blount's Law Dic. tit. Berghmayster. Cowell's Law Dic. tit. Berghmaster.*

(*s*) As to the jurisdiction of such courts, see *ante*, p. 2, *post*, pp. 42, 45.

(*t*) 14 & 15 Vict. c. 94, s. 12.

(*u*) See 14 & 15 Vict. c. 94, s. 22.

(*v*) See 14 & 15 Vict. c. 94, s. 8, and *ante*, p. 32.

barmaster shall be removed into any other court by *certiorari* or otherwise, except in the cases in such Act provided for.

By the 21st section of the Act it is provided that, if any person shall wilfully insult or obstruct the barmaster at any time when in the execution of his office, the steward is empowered to impose upon any such person such penalty not exceeding ten pounds, as the latter shall think fit, who shall also fix a day on or before which, and a person to whom, such penalty shall be paid.

*Barmaster : Fees.]* By the 49th section of the Act it is declared that the fees and payments which shall be paid, had, and taken by the head barmaster and deputy barmasters shall be such as are contained in the 3rd and 4th schedules to the 14 & 15 Vict. c. 94, and that no other fee, gratuity, or reward whatever shall be demanded, had, or taken by any of the said persons on any pretence whatever. The following is a list of the fees in such 3rd and 4th schedules so far as they relate to the offices of barmaster and deputy barmaster.

*A LIST OF THE FEES to be allowed to the Barmaster of the High Peak, on Taxation, as contained in the 3rd and 4th schedules of stat. 14 & 15 Vict. c. 94.*

For summoning the jury to attend small barmote court, 1*l.* 1*s.* for each cause appointed to be heard at the court for which the jury is summoned; such sums to be paid by the plaintiff if the cause do not proceed to the taxation of costs.

For attending small barmote court, 10*s.* 6*d.* for each cause appointed to be heard thereat, to be paid by the plaintiff if the cause do not proceed to the taxation of costs.

	£	s.	d.
For attending a view, except where required by himself	0	10	6
Entering each freeing	0	1	0
Copy of same	0	1	0
Entry of gifts for each vein	0	2	0
Entry of every transfer for each vein	0	1	0
Copy of same	0	1	0
Service of every notice, summons, or order	0	2	0

For executing any warrant issued by the steward :

1st. Where the amount to be levied shall be less than 20*l.* :

	£	s.	d.
Seizing the property - - -	0	8	0
Each man in possession, per day -	0	2	6
All expenses of advertisements, if any	0	10	0
Catalogues, sale and commission, and delivery of goods, 1 <i>s.</i> in the pound on the produce of the sale.			

2d. Where the amount to be levied shall exceed 20*l.* :

Seizing the property - - -	0	10	0
Each man in possession, per day -	0	2	6
All expenses of advertisements, if any	1	1	0
Catalogues, sale and commission, and delivery of goods, 1 <i>s.</i> in the pound on the produce of the sale.			

#### A LIST OF THE FEES contained in the 4th Schedule.

Fees allowed to the barmaster of the High Peak and deputy barmasters ; such fees to be a debt due from the person on whose behalf the duties shall be performed, and to be paid either to the barmaster or his deputy, according as the duty shall be actually performed by him or by his deputy.

	£	s.	d.
Setting out any way under the 4th article - -	0	5	0
Setting out land under the 5th article - -	0	5	0
Setting out meers, for each meer subsequent to the third meer under the 9th article (w). - -	0	0	4

*Barmaster, liability of.*] By section 10, it is declared that the barmaster shall not be answerable for the acts of the deputy barmasters.

The 42nd section of the Act also declares, that no barmaster, and no person acting at the request and in aid of any barmaster, shall be liable to any action for any thing done or authorized by such barmaster, in obedience or necessary for obedience to any

(w) This fee seems applicable to the 10th article, and not to the 9th. See *ante*, pp. 14, 15, 16.

writ, precept, warrant, or process signed by the steward, and sealed with the seal of the courts, although the same be void or irregular, or an excess of jurisdiction; nor shall any act done by any such barmaster or other person, while acting under any such writ, precept, warrant, or process, make him a trespasser *ab initio*, though it be not in obedience or not necessary for obedience to such writ, precept, warrant, or process, but the party committing such last-mentioned act shall be liable to an action for the same if it be illegal.

The barmaster is, however, notwithstanding the above protection, bound to execute his duties faithfully, and on default is, by several clauses of the Act, which will be found separately mentioned under the appropriate titles in this work, subject to heavy penalties.

*Barmaster: Removal.]* The 9th section of the Act declares that the appointment of the barmaster shall be during the pleasure only of the Queen; so that she has an unlimited power to remove at any time.

*Deputy barmasters: Appointment.]* By section 9th of the Act, the barmaster for the time being may (with the consent, in writing, of the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, then with the consent in writing of the Queen or her successors, or of the chancellor for the time being of the duchy of Lancaster,) nominate seven fit and proper persons to serve the office of deputy barmaster, one for each of the seven smaller liberties or districts of Castleton, Bradwell, Hucklow, Winster, Moniash, Taddington, and Upper Haddon; and the deputy barmaster for the time being of the liberty or district of Castleton shall be also the deputy barmaster for such part of the hundred of High Peak as was at the time of the passing of the stat. 14 & 15 Vict. c. 94, namely, the 7th August, 1851, vested in the Queen in right of her duchy of Lancaster, but is not within the King's Field. The barmaster may, however, with the consent above-mentioned, appoint the same person to act as deputy barmaster for any two or more of such smaller liberties or districts.

Every deputy barmaster may, immediately upon his appointment, act as such without being sworn, but must before or at the great barmote court next after his appointment be sworn



well and truly to serve the office to which he is appointed, or such appointment shall be void (x).

*Deputy barmaster : Duties of.]* The duties of the deputy barmasters, whether the barmaster shall be absent or present, are by the 14th section of the Act declared to be—

To serve *summonses* in actions in the small barmote court relating to mineral property within their respective districts.

To serve *summonses* on jurors within their respective districts.

To attend *views on mines* within their respective districts.

To collect *dues* payable within their respective districts to the Queen and her successors, or to her or their lessee for the time being, and to keep *accounts* of such dues.

To keep a *book* and make therein written entries and particulars of all meers of ground which shall be measured and set out by them under the provisions of the stat. 14 & 15 Vict. c. 94 ;

and also of all *transfers of mines* which may be made as provided by the 14 & 15 Vict. c. 94 ;

and also of all freeings and other matters connected with the mines within their respective districts.

To sign such *book* and to deliver the same half-yearly, together with a fair copy of the said accounts and entries, also, signed by them respectively, each such half-yearly account to end on the 25th of March and 29th of September, to the steward at the great barmote court, next after the day to which such accounts shall be made up, or, with the consent of the steward, at any adjournment of the said court ;

to produce any such book ;

and to make and deliver other fair copies of the aforesaid accounts at any other time, upon demand being made by the steward for the production of any such book, or for any such copy.

And (in all other cases in which the barmaster shall not be present and choose to perform such duties in person), *to perform*, within their respective districts, all such duties as are in the stat. 14 & 15 Vict. c. 94, mentioned as forming part of the duties or business of the barmaster (y).

And generally to *assist* the barmaster when required by him

(x) 14 & 15 Vict. c. 94, s. 12.

(y) See *ante*, p. 36, for the duties of barmaster.

so to do, in any other matters forming part of or connected with the duties of barmaster, whether in their own districts or elsewhere within the jurisdiction of the barmote courts(2).

Also the interpretation clause of the Act (section 2) declares that in construing the Act the word "barmaster" shall include "deputy barmasters," unless there be something in the context of the Act repugnant to such construction.

As to the non-removability of proceedings before the deputy barmaster by *certiorari*, except in certain cases, see *ante*, p. 36.

*Deputy barmasters : Fees.]* The fees incident to the office of deputy barmaster are those payable to the barmaster, a list of which see *ante*, pp. 37, 38, (a). Beside the above fees, there is also in the third schedule the following fee mentioned as due to the deputy barmasters for attending a view :—

For attending on a view by the grand jury, except  
where required by himself - - - 10s. 6d.

*Deputy barmasters : Liability of.]* The 42nd section of the Act declares that no deputy barmaster, and no person acting at the request and in aid of any deputy barmaster, shall be liable to any action for anything done or authorised by such deputy barmaster in obedience or necessary for obedience to any writ, precept, warrant, or process signed by the steward and sealed with the seal of the court, although the same be void or irregular, or an excess of jurisdiction ; nor shall any act done by any such deputy barmaster, or other person, while acting under any such writ, precept, warrant, or process, make him a trespasser *ab initio*, though it be not in obedience or not necessary for obedience to such writ, precept, warrant, or process ; but the party committing such last-mentioned act shall be liable to an action for the same if it be illegal.

*Deputy barmasters : Removal.]* As by the 9th section of the Act the deputy barmaster shall continue in office during the continuance only in office of the barmaster by whom he was appointed, such deputy may be removed from his office on the cesser of such continuance in office by the barmaster.

Also, by section 11, the lessee for the time being of the duties of lot and cope, and if there be no such lessee then the

(2) As to jurisdiction of barmote court, see *ante*, pp. 2, 45.

(a) See also interpretation clause, *ante*, p. 9.

chancellor for the time being of the Duchy of Lancaster may remove any deputy barmaster from his office at the pleasure of such lessee or chancellor respectively.

#### SECTION THE SECOND.

*The Barmote Courts of High Peak.*] For the regulation of, and connected with the working of the mines, within the King's Field, and certain parts of the hundred of High Peak, certain courts have from time immemorial existed, governed by peculiar laws and regulations of very high antiquity, called the Great Barmote Court and the Small Barmote Court. But as, before the passing of the Act of 14 & 15 Vict. c. 94, doubts had arisen whether the jurisdiction of such barmote courts extended over such parts of the said hundred of High Peak within which the Queen is entitled to the mineral duties, but which are not included in the King's Field, although the same rights of mining were exercised therein, it was thought necessary to pass the above act, in order, amongst other things, that the jurisdiction of such great and small barmote courts should be more clearly defined and settled.

This subject it is proposed to consider in the order set out at pp. 29, 30.

*Re-establishment.*] Section 6 of the Act re-establishes the great barmote court (b) and the small barmote court (b), and directs when and where they shall be held (c).

By section the 7th the business of such courts is detailed (d) By section the 8th a seal is provided for the said courts (e). By sect. 15 they are made courts of record (f). By sect. 16 the jurisdiction of such courts is defined (g).

By sect. 57 it is provided, that, except as is in the Act provided, nothing in the said Act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges,

(b) It is to be regretted that the ancient orthography of the word barmote was not restored by this clause. The term Berghmoth or Berghmote is derived from the Saxon *berz*, i. e. mountain, and *mote*, or *gemote*, i. e. assembly. The court was held upon the mountain to determine questions relating to the mines in the Peak. See *Blount's Law Dic.*, and *Cowell's Law Dic.*, tit. *Bergmoth*.

(c) See *post*, 45, and 14 & 15 Vict. c. 94, s. 8, app.

(d) See *post*, p. 45.

(f) See *post*, p. 45.

(e) See *post*, p. 45.

(g) See *post*, p. 45.

powers, or authorities, vested in or enjoyed by the Queen, her heirs and successors, either in right of her crown or of her duchy of Lancaster.

By section 54 it is enacted that nothing in the said Act of 14 & 15 Vict. c. 94 contained, shall affect any action, suit, or other proceeding, at the passing of the Act pending in any court of law or equity, but that such action, suit, or other proceeding shall be dealt with and determined, as if the stat. 14 & 15 Vict. c. 94, had not been passed.

And by section 52 it is enacted that no proceedings in the said courts or either of them shall be removed into any other court by *certiorari* or otherwise, except in the cases in such Act provided for.

*General powers relative to courts.]* Beside the duties and powers specially allotted to the great and small barmote courts, the Act contains several provisions applicable to each, which will be more appropriately considered in this place, in order that repetition may be avoided. Thus, by section 17 of the Act, the steward may in any case, and upon such terms as to the payment of costs by either party, or otherwise, as to him shall seem meet—

1. Make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of any action.
2. And also may from time to time *adjourn* any great or small barmote court.
3. And when any court is *adjourned*, the *grand jurymen* and other *jurymen*, who shall have been summoned to such court, shall attend at the adjourned court without any further summoning, and shall be liable to the same penalties for not attending at an adjourned court as for not attending upon a summons.
4. And also may from time to time *adjourn* the *hearing*, or further hearing of any cause or other proceeding in the said courts, or either of them, or before the steward, in such manner as to the steward may seem fit; provided always, that the further hearing of any cause or other proceeding of which the hearing shall have been commenced, and in which any evidence shall have been given, shall not be adjourned for any longer period than until the day next after that on which the adjournment takes

place, or, if such next day be Sunday, Good-Friday, Christmas-day, or any day appointed for a public fast or thanksgiving, then until the day next but one after that on which the adjournment takes place (h).

*Order to adjourn Proceedings either in the Great or Small Barmote Court or before the Steward.*

It is ordered, that the proceeding in this matter [*whatever it be, stating it*] be adjourned until ———, [*add, if necessary, and that ——— do pay to ——— costs, or other the terms, if any, upon which the adjournment is made*].

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A. B., steward.

*Examination of parties.*] By the 18th section of the Act it is provided, that on the hearing or trial of any action, or in any other proceeding under the Act, the parties thereto, their wives, and all other persons, may be examined upon oath, or solemn affirmation instead of taking an oath; such oath or affirmation to be administered by the steward,

*Penalty for false evidence.*] But every such person, who, in any examination upon oath or solemn affirmation before the said steward, shall wilfully and corruptly give false evidence, shall be deemed guilty of perjury, and shall be liable to be indicted and subject to the same punishments as may be imposed on persons guilty of perjury in any of the superior courts of Westminster(i).

*Penalty for refusing to give evidence.*] Also, if any such person appearing as a witness shall refuse to give evidence or to answer any lawful question, the steward may impose upon such person such penalty, not exceeding ten pounds, as the said steward shall think fit (k).

*Penalty for insulting the courts.*] By section 21 of the said Act, if any person shall wilfully insult either of the said courts, or create any disturbance during the sitting of either of them, or at any view, the steward is empowered to impose upon any

(h) See stat. 14 & 15 Vict. c. 94. s. 17, app.

(i) See stat. 14 & 15 Vict. c. 94, s. 19, app.

(k) See stat. 14 & 15 Vict. c. 94, s. 20. app.

such person such a penalty, not exceeding ten pounds, as the latter shall think fit, who shall also fix a day on or before which, and a person to whom, such penalty shall be paid.

*Great barmote court : Holding.]* By the 6th section of the Act, it is enacted, that two great barmote courts shall be held every year at Monyash, in the county of Derby ; the one on the first Tuesday in April, and the other on the first Tuesday in October ; but if the first Tuesday in April be in Passion Week or Easter Tuesday, or a day appointed for a public fast or thanksgiving, then such court shall be held on the Tuesday next after, instead of being holden on such first Tuesday.

*Jurisdiction.]* By section 16, the jurisdiction of the great barmote court, and of the Act 14 & 15 Vict. c. 94, is enacted to extend over the whole of the before-mentioned district, called the King's Field ; and also over all those parts of the hundred of High Peak, in which the Queen, in right of her duchy of Lancaster, is entitled to mineral duties.

*Seal.]* By section 8, the steward is directed to provide a seal or stamp, with the words "The Seal of the High Peak Barmote Courts" thereon ; and all proceedings in such courts required to be signed by the steward shall be sealed or stamped therewith.

*Court of record.]* By section 15, the great barmote court is declared to be a court of record ; that the steward shall be judge thereof ; and that he may out of court do all such acts of the court as do not require the presence of a jury.

*Power to make rules, orders, &c.]* By section 56, the steward and grand jury, at any great barmote court, are empowered to make such new and additional articles, rules, and orders, as to them shall seem expedient for the better regulation of—

1. The practice and proceedings of the great and small barmote courts, or of any views, or other proceedings.
2. And for the execution of any process of such courts.
3. And in relation to any of the provisions of this Act, or of the articles and customs by such Act established (1).

(1) As to the manner in which this is to be done, see *ante*, p. 37.

*Grand jury : Appointment.*] By stat. 14 & 15 Vict. c. 94, s. 22, it is enacted, that from and after the 7th August, 1851, the grand jury shall consist of twelve men only, who shall be selected by the barmaster from amongst persons resident within the jurisdiction of the said great and small barmote courts (m) : and as far as conveniently can be done, it is the duty of the barmaster to select persons experienced in practical mining ; but a want of such experience shall be no ground of objection to any person serving on the grand jury if summoned so to do, nor of exemption from such service.

The grand jury is to be composed thus :—

One man from the liberty of Castleton.		
Two	do.	Bradwell.
Two	do.	Hucklow.
Two	do.	Winster.
Two	do.	Monyash.
One	do.	Taddington.
One	do.	Upper Haddon.
One ditto from such parts within the jurisdiction of the said great and small barmote courts (n), as are not within any of the aforesaid liberties.		

And at the second great barmote court, which shall be held after the 7th day of August, 1851 (n), six of the grand jury, to be determined by lot, shall be discharged, and six new grand jurymen substituted ; and at every subsequent great barmote court, six of the grand jury, being those who have been longest in office, shall be discharged, and six new grand jurymen substituted in their stead ; so that every member of the grand jury shall serve for a period extending over the holding of two great barmote courts. The section also provides that no person is compellable to serve on the grand jury oftener than once in three years ; and that as often as any of the grand jury shall die or become incompetent to act, the barmaster shall select another person in his place, without waiting for the holding of a great barmote court ; and every member of the grand jury shall be sworn in by the steward as soon as conveniently may be, either at a great or small barmote court, or out of court, as may be most convenient ; but every such member shall be competent to

(m) As to the jurisdiction of such courts, see *ante*, p. 45.

(n) As to the holding of the great barmote court, see *ante*, p. 45.

act immediately upon his appointment, as one of the grand jury, without waiting for being sworn as aforesaid (o).

*Grand jury : Duties of.]* By the 23rd section of the Act, the duties to be performed by the grand jury may, in cases where no other provision is made by the stat. 14 & 15 Vict. c. 94, be performed by any eight of the body, and such duties shall be—

To attend upon summons (p) at the great barmote courts, and at any other time upon the summons of the barmaster, or of any deputy barmaster, such summons to be delivered to all the members of the grand jury, or to be left at their respective last or usual places of abode, at least three days before the day on which their attendance is required to go down into any mine, vein, or mineral works, and view the same (q).

And give their opinion on such matters as are required of them in any bill of directions or cross bill delivered to them (q).

And generally to do and perform all such acts and duties as are in the Act 14 & 15 Vict. c. 94, mentioned as being acts to be done, or duties to be performed by the grand jury (q).

And to assist the steward, under section 56, to make new and additional customs, articles, rules, and orders. See ante, pp. 7, 26, 27.

The following are the several forms of summons provided by the second schedule of the 14 & 15 Vict. c. 94, for the due summoning of the grand jury.

*Summons to Grand Jurors to attend the Great Barmote Court, or on View.*

You are hereby required to attend the High Peak great barmote court, to be held at —— within the hundred of High Peak, in the county of Derby, or to attend the barmaster on a view, to be held at —— on the —— day of ——.

Dated this —— day of —— 185—.

A.B., Barmaster, or

Deputy Barmaster.

To C.D.

(o) See stat. 14 & 15 Vict. c. 94, s. 22.

(p) See form *infra*.

(q) See stat. 14 & 15 Vict. c. 64, s. 2, app. As to the consequences of wilfully disturbing a view, see sect. 21.



*Bill of Directions on a View.*

To the grand jury for the High Peak barmote courts, met at ——— within the hundred of High Peak, in the county of Derby, on the ——— day of ——— 185—.

You are desired by C.D. [*party calling the jury*] to view, &c. [*describing the mine, or particular parts of the mine, or the works, or other matters or things, which the jury are required to view*], and then give your opinion whether, &c., *clearly stating the question upon which the opinions of the grand jury are required.*

*If the grand jury are required to dial the mine, add "and you are requested to dial the said mine, commencing, &c. [describing the limits within which such dialling is to be made], and to lay out your dialling on the surface, and to deliver your dial card, with your opinion, to the steward."*

*Return of Grand Jury to a Bill or Cross Bill of Directions (r).*

We the grand jury [*where all agree in opinion, or, we [or I] the undersigned members [or member] of the grand jury, where there is difference of opinion*] for the High Peak barmote courts, assembled this ——— day of ——— to view, &c., having had a bill [*or cross bill*] of directions given to us, do declare that we have proceeded to view, &c., as directed by the said bill [*or cross bill*], and do declare our [*or my*] opinion to be that, &c., *giving their [or his] opinion clearly on the question proposed*. As witness our [*or my*] hands [*or hand*].

Signatures.

*Memorandum to be added after the signatures of the majority, where one or more of the grand jury do not concur in the return (r).*

We [*or I*] the undersigned do not concur in the above return, and are [*or am*] of opinion that, &c., *stating their [or his] opinion clearly on the question proposed.*

As witness our [*or my*] hands [*or hand*].

Signatures.

(r) These forms are given by the 3rd schedule of stat. 14 & 15 Vict. c. 94.

*Grand jury : Fees.*] By the 49th section of the Act, it is declared that the fees and payments which shall be paid, had, and taken by the grand jury, shall be such as are contained in the third schedule to the 14 & 15 Vict. c. 94; and that no other fee, gratuity, or reward whatever, shall be demanded, had, or taken by any of the said grand jury on any pretence whatever. The following is a list of the fees in such third schedule, so far as it relates to the office of grand jury.

A LIST OF THE FEES to be allowed to the Grand Jury on Taxation, as contained in the 3rd schedule to the stat. 14 & 15 Vict. c. 94.

For attending on a view, each man, when called to act	<i>s. d.</i>
within his own liberty	- - - 4 0
When called to act out of his own liberty	- - - 6 0

*Grand jury : Exemption.*] The 39th section of the Act provides, that all persons for the time being exempted by law from serving on juries, shall be exempt from serving on the grand jury, notwithstanding such persons may, in other respects, be qualified for serving on such grand jury as aforesaid.

*Grand jury : Penalties.*] The grand jury are, by the 38th section of the Act, subject to the under-mentioned penalty on neglect of duty as hereinafter mentioned :

1. If any person liable to act as a grand jurymen, having been *duly* summoned to attend at the great barmote court, or on any *other* occasion on which the grand jury are by the stat. 14 & 15 Vict. c. 94 required to attend, and shall not attend in pursuance of such summons ;
2. Or being called shall not *answer* to his name ;
3. Or if any such person, being present after having been called, shall not *duly appear* ;
4. Or after his appearance shall wilfully *withdraw* himself ;
5. Or shall refuse to *act* on the grand jury ;
6. Or to *perform* the duties required of him ;

The steward is empowered to impose such penalty, not exceeding ten pounds, upon every such person so making default, as shall seem meet to the steward, unless some reasonable excuse shall be given to the satisfaction of the steward.

If the steward impose a penalty, he shall fix a day on or before which, and a person to whom, such penalty shall be paid ; and if

it be not paid within such time, the steward is empowered to issue his warrant (s) for the levying thereof, with all the costs and charges attending such levying. The penalty may be imposed in the absence of the party making default, and without calling on him to show cause why it should not be imposed. Although it is no objection to the execution of such warrant that the party had no notice of the penalty, yet, if he shall think himself aggrieved by the imposition thereof, or by the execution of such warrant, the steward may grant him such relief as he may think just (t).

*Duties of great barmote court.*] The matters to be transacted at the great barmote courts are (u)—

1. The *swearing* in of the grand jury and such other matters as are in the Act 14 & 15 Vict. c. 94, s. 7, mentioned as being matters to be transacted at the great barmote courts: as,
2. The making of such new and additional customs, articles, rules, and orders, as the steward and grand jury shall deem expedient for the better regulation of the working and carrying on of the mines within the district under the provisions of the Act,

And for the guidance and protection of the mines in reference to the working and carrying on of mines within the said district,

And also for regulating the practice and proceedings of the great and small barmote courts,  
or of any views,  
or other proceedings,  
and for the execution of any process of such courts,  
and in relation to any of the provisions of this Act,  
or of the articles and customs by such Act established (v).

*Powers of.*] As to the *powers*

To *grant time* to parties, see *ante*, p. 43.

To *adjourn courts*, see *ante*, p. 43.

(s) See form of warrant, *post*, pp. 77, 78.

(t) See stat. 14 & 15 Vict. c. 94, s. 38, which is similar in its provisions to sect. 37, as to penalties on *jurors* for non-attendance, &c.

(u) See 14 & 15 Vict. c. 94, s. 7, app.

(v) See 14 & 15 Vict. c. 94, s. 56, app.

To adjourn hearing, see *ante*, p. 43.

For the examination of parties, see *ante*, p. 44.

As to penalty for *false evidence*, see *ante*, p. 44.

As to penalty for refusing to *give evidence*, see *ante*, p. 44.

As to penalty for *insulting* the courts, see *ante*, p. 44.

*Formula of great barmote court.*] The proceedings of the great barmote court must, by section 48 of the Act, be in the forms given in the 2nd schedule annexed thereto, or to the like effect; and in any proceeding not thereby provided for, the steward is empowered to adopt such form as he shall think fit and applicable to such proceeding.

*Small barmote court : Holding.*] By the 6th section of the Act it is enacted, that small barmote courts shall be held from time to time as occasion shall require, but not on the days appointed for the holding of the great barmote courts, which are the first Tuesday in April and the first Tuesday in October; provided that if the first Tuesday in April be in a Passion week, or Easter Tuesday, or a day appointed for a public fast or thanksgiving, then such great barmote court shall be held on the Tuesday next after, instead of being holden on such first Tuesday.

It is also declared that the small barmote courts shall be held at any place within the jurisdiction of such courts which may be appointed by the steward, which place may also be varied at any time or from time to time.

*Jurisdiction.*] By section 16 of the Act the jurisdiction of the small barmote court is declared to extend over the whole of the before-mentioned district called the King's Field, and also over all those parts of the hundred of High Peak in which the Queen, in right of her duchy of Lancaster, is entitled to mineral duties.

But by section 55 it is provided, that nothing in the 14 & 15 Vict. c. 94 contained, shall preclude any person from proceeding in any other court having jurisdiction therein, in respect of any matter made triable in the small barmote court.

*Seal.*] By section 8 of the Act the steward is directed to provide a seal or stamp with the words "The Seal of the High Peak Barmote Courts" thereon; and all proceedings in such

courts required to be signed by the steward, shall be sealed or stamped therewith.

*Courts of record.*] By section 15 of the Act the small barmote court is declared to be a court of record, that the steward shall be judge thereof, and that he may out of court do all such acts of the court as do not require the intervention of a jury.

*Power to make rules, orders, &c.*] By section 56 the steward and grand jury at any great barmote court are empowered to make such new and additional articles, rules, and orders, as to them shall seem expedient for the better regulation of

1. The practice and proceedings of the great and small barmote courts or of any views or other proceedings.
2. And for the execution of any process of such courts.
3. And in relation to any of the provisions of the 14 & 15 Vict. c. 94, or of the articles and customs by such Act established (*w*).

*Duties of small barmote court.*] The matters to be transacted at the small barmote courts.

1. The trial of actions of title, trespass, and debt (*x*).
2. And such other matters as are in the stat. 14 & 15 Vict. c. 94, mentioned as being matters to be transacted at the small barmote courts (*x*).

*Formulæ of small barmote court.*] The proceedings of the small barmote court must, by section 48 of the Act, be in the forms given in the second schedule annexed thereto, or to the like effect; and in any proceeding not thereby provided for, the steward is empowered to adopt such form as he shall think fit and applicable to such proceeding.

*Officers of small barmote court—Barristers, attorneys, &c.*] The legislature has clearly ordained that no one shall practise in the small barmote court established under the Act, except attorneys of the superior courts at Westminster, and that barristers are to have

(*w*) As to the manner in which this is to be done, see *ante*, p. 27.

(*x*) See stat. 14 & 15 Vict. c. 94, s. 7, app.—The generality of this clause must be limited to those actions, disputes, and matters, which arise respecting the working of the mines. See article 16, *ante*, p. 18.

the exclusive audience in the courts on the trial of causes, &c. As an evidence, and in furtherance of this intention, the 3rd schedule to the Act will be found to contain a list of fees applicable to each division of the profession (y): thus, while on the one hand attorneys are allotted certain fees for drawing briefs, &c., on the other the steward is to allow, on taxation, such fees to counsel as he shall think reasonable.

*Fees.*] By the 49th section of the Act it is declared that the fees and payments which shall be paid, had, and taken by attornies, shall be such as are contained in the 3rd schedule to the 14 & 15 Vict. c. 94, and that no other fee, gratuity, or reward whatever shall be demanded, had, or taken, by such attornies on any pretence whatever.

The following is a list of the fees to be allowed to attornies, on taxation, as contained in the 3rd schedule to stat. 14 & 15 Vict. c. 94:—

	£	s.	d.
For attending every witness examined in court, and taking down his evidence - - - -	0	6	8
Drawing brief, 6s. 8d. per sheet.			
Making fair copy thereof. (Half charge allowed for drawing.)			
For attending court on the trial, and conducting same	2	2	0
And also mileage, 1s. per mile, from his place of residence to the place where the court is held, such mileage in no case to exceed 1l.			
For every copy of subpoena - - - - -	0	1	0
If duces tecum, 6d. additional.			
For attending to serve every witness with subpoena -	0	2	6
And 1s. per mile from attorney's residence, if witness resides within the hundred of High Peak, such mileage in no case to exceed 1l.; if in any other place, the sum paid to any agent employed to serve same, provided such sum be approved and allowed by the steward.			
Such fees to COUNSEL as the steward shall think reasonable, and allow on taxation.			

*Practice of the small barmote court: Plaint.*] It is the duty of

(y) See also sect. 24, app.

the steward to enter upon request any plaint (z) that may be made, which entry shall be in the following form :—

In the High Peak Small Barmote Court.

*Form of Plaint (a).*

Plaintiff's Name.	Plaintiff's Place of Abode and Calling.	Defendant's Name.	Defendant's Place of Abode and Calling.	Nature of Action.
John Smith	Castleton	Richard Davis	Hucklow	Action of Title, Trespass or Debt, as the Case may be.

*Summons.*] The steward should, upon the entry of every plaint, cause a summons to be issued in accordance, according to the nature of the case, with one of the forms hereinafter given (z).

In the High Peak Small Barmote Court.

*Summons in Title (b).*

To C.D. (the defendant).

You are hereby summoned to appear at a small barmote court to be held at ———, on the ——— day of ———, at the suit of A. B., plaintiff, in an action of title in the High Peak small barmote court, respecting, &c. [*describe the mine claimed.*]

Given under the seal of the court, this ——— day of ———,

By the court, E. T., steward.

In the High Peak Small Barmote Court.

*Summons in Trespass or Debt (b).*

To C.D. (the defendant).

You are hereby summoned to appear at a small barmote court to be held at ———, on the ——— day of ———, in an action of trespass in the small barmote court, at the suit of A. B., for £—— damages for a trespass committed by you at ———, [if

(z) 14 & 15 Vict. c. 94, s. 24.

(a) This form is given in 2nd schedule of 14 & 15 Vict. c. 94.

(b) These forms are given in the 2nd schedule of stat 14 & 15 Vict. c. 94.

*in debt, say, "in an action of debt in the High Peak small barmote court for the sum of £—— (the sum claimed) for goods sold and delivered," "wages," or as the case may be, the particulars whereof are hereto annexed].*

Given under the seal of the court, this ——— day of ———,  
By the court, E. T., steward.

And if such summons be in an action of debt, there shall be annexed to or written at the foot thereof, a particular of the plaintiff's demand, which shall be in the following form, or as near thereof as the circumstances of the case will permit.

*Form of Particulars in an Action of Debt, to be annexed to the Summons or written at the foot thereof (c).*

In the High Peak Small Barmote court.

A.B., plaintiff,  
and  
C.D., defendant.

Particulars of the debt for which this action is commenced.

1850:	£	s.	d.
January 3. To one barrel of powder, 50lbs. at 6d.			
per lb. - - - - -	1	5	0
[Add all other items making up debt.]			
[If for wages or work done.]			
To driving seven fathoms in West Fore-field [describe work], at 1l. 5s. per fathom - - - - -	8	15	0
5th to 15th. To working nine shifts, at 2s. 3d. per shift - - - - -	1	0	3
30th. To four weeks wages, at 12s. per week	2	8	0
To six days' work, man and horse [or cart] grinding [or leading] describing work, at 5s. 6d. per day - - -	1	13	0

Above are the particulars of debt in this action. As witness my hand.

A.B., or  
A.B., by E.F., his attorney  
or agent.

(c) This form is given in the 2nd schedule of stat. 14 & 15 Vict. c. 94.



By the 16th article, *ante*, p. 19, no evidence shall be admitted of any items in an action of debt not mentioned in the particulars annexed to the summons.

The summons must be served upon the defendant by the barmaster (for which he is entitled by the 3rd schedule to a fee of two shillings) fourteen clear days at least (*d*) before the day appointed for the trial, by leaving such summons at the usual or *last place* (*e*) of abode of the defendant, and by affixing a copy thereof on some conspicuous part of the mine to which the question of title, trespass, or debt to be tried, has reference. If, however, there shall be in one case more defendants than one, service on one of such defendants is sufficient (*f*).

*Setting aside or staying proceedings.*] It may be as well to advert here to the power which the steward has either to set aside or stay proceedings, in doing which he is required to act so far as may be on the same principles as are acted upon in similar cases by the superior courts at Westminster (*g*).

*Removal of proceedings.*] It may also be useful here shortly to state that the court of Queen's Bench, at Westminster, or for any judge of any of the superior courts at Westminster, on the application of either the plaintiff or defendant in an action in the small barmote court before trial, on cause shown by affidavit to the satisfaction of such court or judge that an impartial or satisfactory trial cannot be had in such barmote court, or for any other cause which to such a judge shall seem reasonable, to allow a *certiorari* to be issued out of the said court of Queen's Bench for removing all proceedings which may have been had in such action into the said court of Queen's Bench (*h*). For the necessary proceedings consequent upon removal, see *post*, pp. 66, 67 (*i*).

(*d*) "Clear days" mean exclusive of day of service and return.

(*e*) See stat. 14 & 15 Vict. c. 94, s. 25, app.: the Act does not say last known place of abode.

(*f*) See stat. 14 & 15 Vict. c. 94, s. 25, app.

(*g*) 14 & 15 Vict. c. 94, s. 27. See forms *post*, pp. 65, 66. It is doubtful whether under this clause the steward's power is extended to proceedings in the great barmote court.

As to the power to grant time, &c., see *ante*, p. 56.

(*h*) See 14 & 15 Vict. c. 94, s. 29.

(*i*) *Ibid.*, s. 30.

*Time of trial.*] The steward must, on the day mentioned in such summons, and within one calendar month of the entering of the plaint, hold a small barmote court for the trial of the cause (k).

*Jurors: Appointment of.*] The barmaster, with the assistance of his deputies, must, every year, make out in writing a list of not less than forty-eight owners or maintainers of mines situate within the jurisdiction of the barmote courts, not being members of the grand jury for the time being, but resident within the county of Derby, and fix the same upon the door of the court where the *April* great barmote court is held (l): such list the barmaster, with such assistance of his deputies, must afterwards copy into a book to be called the jury book, which the barmaster shall keep; and he shall, one week before any small barmote court, cause to be summoned twenty-four persons therein named to attend at the time and place appointed for holding such small barmote court, which summons shall be in the form or to the effect following, that is to say:—

*Summons to Jurors to attend Small Barmote Court (m).*

You are hereby summoned to attend the High Peak small barmote court at ———, at ——— o'clock in the forenoon, to serve as a juror on the trial of causes at the said court; and if you fail herein you will be liable to a penalty not exceeding ten pounds, to be levied on your mineral property.

Dated this ——— day of ———, 185—.

A. B., Barmaster, or

Deputy Barmaster.

To C. D. [*add residence.*]

The summons must be served either personally on such person, or by leaving it at his usual or last known place of abode.

It should be borne in mind that no person shall be summoned oftener than once in three years, unless there shall be a deficiency in the number of jurors, so that a jury cannot be formed without summoning jurors who have served within such three years;

(k) See stat. 14 & 15 Vict. c. 94, s. 24, app. and see *ante*, p. 51.

(l) 14 & 15 Vict. c. 94, s. 34.

(m) This form is given in the second schedule of the 14 & 15 Vict. c. 94.

no proceeding shall, however, be held void on the ground, that a person who has served on the jury was not liable to be summoned (n).

The barmaster's fee for summoning such jury to attend the small barmote court is £1. 1s. for each cause appointed to be heard at the court for which the jury is summoned; such sums to be paid by the plaintiff if the cause do not proceed to the taxation of the costs(o).

*Ballot and challenge of jurors.*] After the jurors have been summoned as before mentioned, it is the duty of the barmaster to make a list of them, together with their places of abode and conditions (p), which list he must permit to be inspected both by the plaintiff and defendant if required by either of them.

It is also the duty of the barmaster to cause the names of the jurors to be written severally on slips of paper and put into a box. The names of the jurors so put into the box are to be drawn forth by the barmaster, and either the plaintiff or defendant may, until no more than twelve remain, object to any person whose name is so drawn out, without assigning any cause, but so that not more than six such objections be made by either party.

If any objection is made to the twelve so remaining it must be stated to, and the validity or invalidity thereof decided upon by, the steward.

The twelve first persons to whom no objection shall be made shall be the jury to be sworn for the trial.

Any person against whom an objection shall have been made and disallowed by the steward shall be considered as a person against whom no objection has been made.

If, after drawing out the names of all the jurors, there shall not appear to be twelve persons against whom no objection shall have been made, then the names of all the jurors against whom objections have been made shall be returned to the box and drawn again, without any further objection being allowed to any of them, until a sufficient number be drawn to make a jury of twelve, and such jury of twelve shall be the jury to be sworn for the trial to take place at such small barmote court.

(n) See stat. 14 & 15 Vict. c. 94, s. 34.

(o) See third schedule to 14 & 15 Vict. c. 94.

(p) 14 & 15 Vict. c. 94, s. 35.

The jury so drawn as aforesaid shall be sworn by the steward, and shall hear the evidence of the witnesses in the cause, and shall be required to give an *unanimous* verdict or verdicts upon all matters of fact at issue in such trial, which matters of fact shall be submitted, by the steward, to the jury for their determination (q).

If, however, there shall happen to be more than one cause to be tried at any small barmote court, the jury sworn for the trial of the first cause may and shall, with the consent of the parties to the second or other subsequent causes, be sworn for and be the jury for the trial of such second and subsequent causes. Provided that any party to such second or subsequent causes, or the steward, may require a fresh jury to be drawn (r).

*Jury: Exemption.*] By the 39th section of the Act, all persons for the time being exempted by law from serving on juries shall be exempt from serving on any jury for the trial of causes in the small barmote court, notwithstanding such persons may in other respects be qualified to serve on any jury for the trial of causes as aforesaid.

*Jurors: Penalties.*] The jury of the small barmote courts are, by the thirty-seventh section of the Act, subject to the under-mentioned penalty on neglect of duty, as hereinafter mentioned.

1. If any person liable to serve as a jurymen in the small barmote court shall have been *duly* summoned to attend as a juror and shall not *attend* in pursuance of such summons;
2. Or, being thrice called in court, shall not *answer* to his name;
3. Or if any such person, being present in court after having been called, shall not *duly appear*;
4. Or after his appearance shall wilfully *withdraw* himself from the presence of the court;
5. Or shall refuse to *act* as a jurymen;

The steward may impose such penalty, not exceeding ten pounds, upon every such person so making default as to the said steward shall seem meet, unless some reasonable excuse shall be given to the satisfaction of the steward. And the steward shall

(q) See stat. 14 & 15 Vict. c. 94, s. 35, app.

(r) See stat. 14 & 15 Vict. c. 94, s. 36.

fix a day on or before which, and a person to whom, such penalty shall be paid; and if such penalty shall not be paid within such time, the steward is empowered to issue his warrant in the form hereinafter mentioned, for the levying thereof, with all the costs and charges attending such levying; and such penalty may be imposed in the absence of the party making default, and without calling on him to show cause why it should not be imposed.

Although it is no objection to the execution of such warrant that the party had no notice of such penalty, yet, if any person shall think himself aggrieved by the imposition of such penalty, or the execution of such warrant, the steward shall grant him such relief as to the steward shall seem just (s).

*Witnesses: Subpœna, &c.*] The attorney for each party should, as in actions in the superior courts at Westminster, attend upon those whom he intends to call as witnesses in support of his client's case, and take down their evidence, in order to insert it in the briefs for counsel (t).

The parties to the suit or any other proceeding under the stat. 14 & 15 Vict. c. 94, or their attornies, may obtain at or from the office of the steward, upon payment of his fee of 2s. 6d. for issuing the same (u), subpœnas to compel the attendance of witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control; and in any such subpœna any number of names may be inserted (v).

The following is the form of subpœna as given by the 2nd schedule of the Act.

#### *Subpœna.*

A.B., steward of the High Peak barmote courts, to ———, greeting. You and every of you are hereby required personally to attend at the small barmote court to be holden at ———, on ——— the ——— day of ——— next, by ——— of the clock in the forenoon of the same day, [*if the witness is required*

(s) See stat. 14 & 15 Vict. c. 94, s. 37, which is similar in its provisions to s. 38, as to penalties on grand jurors for non-attendance.

(t) As to who may be witnesses, see *ante*, p. 44.

(u) See 3rd schedule to 14 & 15 Vict. c. 94.

(v) See stat. 14 & 15 Vict. c. 94, s. 40.

*to bring with him any documents, describe them here*], to testify the truth according to your knowledge in a certain action in the barmote court now depending between ———, plaintiff, and ———, defendant, in an action of [title, trespass, or debt, as *the case may be*], at the said court to be tried. Should you fail herein, you will be liable to be proceeded against in like manner as for disobedience to a subpoena issuing out of the court of Queen's Bench at Westminster.

Given under the seal of the court, this ——— day of ———, in the year 185—.

A.B., steward.

The subpoenas must be served upon the witnesses in like manner as subpoenas issuing out of the superior courts at Westminster (*w*). Also, every such subpoena to attend and give evidence upon any trial in the small barmote court, if served personally upon the person required to give evidence in any part of England or Wales seven clear days at the least before the day fixed for the holding the court at which such trial is to be had, shall be as valid and effectual in law, and shall entitle the party suing out such subpoena to all and the like remedies by action, as if the same had been issued out of the court of Queen's Bench at Westminster, in any cause depending in that court (*x*).

And in case the person served with such subpoena shall not appear as required thereby, the steward is empowered, upon oath or affirmation taken in open court of the personal service of such subpoena, and of the tender to the person so served at the time of such service of a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, to give to the party complaining of such default a certificate of such default under the hand and seal of the said steward, and the party complaining of such default having obtained such certificate may apply to the court of Queen's Bench at Westminster, and such court shall thereupon (if it seems to them just to do so) proceed by attachment or otherwise, according to the course and practice of such court, against the person so having made such default, in like manner as the same court might have done if such person had neglected or refused to appear in obedience to a writ of subpoena issued

(*w*) See stat. 14 & 15 Vict. c. 94, sect. 40.

(*x*) See stat. 14 & 15 Vict. c. 94, sect. 31, app.

to compel the attendance of witnesses out of such last-mentioned court ; but such certificate shall not be conclusive either of the due service of the subpoena or of the same having been disobeyed, or of any other matter (x).

As to penalty for giving false evidence, see *ante*, p. 44.

As to penalty for refusing to give evidence, see *ante*, p. 44.

The following is the list of fees to the attorney for the above matters provided by the 3rd schedule to 14 & 15 Vict. c. 94 :—

For attending every witness <i>examined in court</i> and	<i>s. d.</i>
taking down his evidence - - - - -	6 8
For every copy subpoena - - - - -	1 0
If <i>duces tecum</i> , 6 <i>d.</i> additional.	

For attending to serve every witness with subpoena - 2 6

And 1*s.* per mile from attorney's residence, if witness resides within the hundred of High Peak, such mileage in no case to exceed 1*l.* ; if in any other place the sum paid to any agent employed to serve same, provided such sum be approved and allowed by the steward.

*Briefs, &c.*—The attorney should also prepare his briefs, as in ordinary cases, his fees for which are as follows (y) :— *s. d.*

Drawing brief, per sheet - - - - -	6 8
Making fair copy thereof, per sheet - - - - -	3 4

(i.e., half the charge allowed for drawing).

He should deliver them to counsel, whose reasonable fees the steward will allow to the attorney on taxation (z), and attend the court on the trial, for which he is entitled by the same schedule to the following charges :—

For attending court on the trial, and conducting	<i>£ s. d.</i>
same - - - - -	2 2 0

And also mileage 1*s.* per mile, from his place of residence to the place where the court is held, such mileage in no case to exceed 1*l.*

The barmaster is also entitled for attending the small barmote court to a fee of 10*s.* 6*d.* for each cause appointed to be heard thereat, to be paid by the plaintiff, if the cause do not proceed to the taxation of costs.

(x) See stat. 14 & 15 Vict. c. 94, s. 31.

(y) See the 3rd schedule to 14 & 15 Vict. c. 94.

(z) See *ante*, pp. 52, 53.

*Hearing and Judgment.*] The plaintiff and defendant, or their respective attornies or agents, should appear at the time and place appointed for the trial, and the steward will proceed in a summary way to try the cause, leaving all matters of fact in issue in the cause to be determined by the jury sworn for the trial, and shall give judgment, which shall be enforced by warrant issued under the hand of the steward and the seal of the barmote courts; and the defendant shall be allowed to give evidence of any special matter of defence (a).

If, however, on the return day of the summons the defendant do not appear, the plaintiff upon proof of the service of such summons, may proceed to trial; and if the steward thinks that the plaintiff is entitled to recover, he, the plaintiff, shall have judgment (b) in one of the following forms, applicable to the nature of the case.

*Judgment against Defendant for Payment of Debt or Damages.*

In the High Peak Small Barmote Court, held at ———, within the hundred of High Peak in the county of Derby, the ——— day of ———.

Between A.B., plaintiff,  
and  
C.D., defendant.

After hearing this cause, it is, on the ——— day of ———, [insert day when judgment is given], adjudged that the said plaintiff do recover against the said defendant the sum of £—— for his debt [or damages by him sustained], together with the costs of the suit, amounting to the sum of £——.

Given under the seal of the court, this ——— day of ———.  
By the court, A.B., steward.

*Judgment for Recovery of Possession (c).*

In the High Peak Small Barmote Court, held at ———, within the hundred of High Peak in the county of Derby.

Between A.B., plaintiff,  
and  
C.D., defendant.

After the hearing of this cause, it is, on the ——— day of ———, adjudged that the said plaintiff do recover against the said

(a) See stat. 14 & 15 Vict. c. 94, s. 24, app.

(b) See stat. 14 & 15 Vict. c. 94, s. 25.

(c) This form is given in the 2nd schedule of 14 & 15 Vict. c. 94.



defendant possession of a certain mine at ———, together with the costs of the suit amounting to the sum of £——.

Given under the seal of the court, this ——— day of ———.

By the court,

A.B., steward.

If, on the other hand, the plaintiff in any action either of title, trespass, or debt, shall not proceed to trial at the time and place appointed, the steward shall cause judgment, as in case of nonsuit, to be entered for the defendant (d) in the following form (e).

*Judgment in Case of Nonsuit.*

In the High Peak Small Barmote Court, held at ———, within the hundred of High Peak in the county of Derby, the ——— day of ———.

Between A.B., plaintiff,

and

C.D., defendant.

It is, on the ——— day of ———, adjudged that judgment by way of nonsuit do pass against the said plaintiff, and that the said defendant do recover against the plaintiff the sum of £——, for the costs incurred by the said defendant in his defence of this action.

Given under the seal of the court, this ——— day of ———.

By the court,

A.B., steward.

Or if the plaintiff shall proceed to trial and the verdict shall be found against him, the defendant shall have judgment in the following form :—

*Judgment against Plaintiff (f).*

In the High Peak Small Barmote Court, held at ———, within the hundred of High Peak in the county of Derby, the ——— day of ———.

Between A.B., plaintiff,

and

C.D., defendant.

It is, on the ——— day of ———, adjudged that judgment

(d) See stat. 14 & 15 Vict. c. 94, s. 26.

(e) This form is given by the 2nd schedule of stat. 14 & 15 Vict. c. 94.

(f) This form is given in the 2nd schedule to 14 & 15 Vict. c. 94.

pass against the said plaintiff, and that the said defendant do recover against the said plaintiff £——, for the costs incurred by the said defendant in his defence of this action.

Given under the seal of the court, this —— day of ——.

By the court, A.B., steward.

As to the power to adjourn courts or hearing, &c. p. 43.

As to the penalty for insulting the court, see *ante*, pp. 44, 45.

*Costs.*] The party who has judgment in his favour, in whatever way such judgment may be obtained, shall by the same judgment recover his costs of suit or defence, as the case may be (g).

*New trial, setting aside judgment and other proceedings, and staying proceedings.*] The steward has power to grant new trials, to set aside judgments and other proceedings, and may stay proceedings, and in so doing he is directed to act as far as may be on the same principles as are acted upon in similar cases by the superior courts at Westminster (h). The following are the forms given by the 2nd schedule of the Act for the above purposes (i).

*Order for a new Trial.*

In the High Peak Small Barmote Court, held at ——, the —— day of ——.

Between A. B., plaintiff,

and

C. D., defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties [*here state the terms and conditions, if any, of such new trial.*]

Given under the seal of the court, this —— day of ——, in the year 185—.

By the court,

A. B., steward.

(g) See stat 14 & 15 Vict. c. 94, s. 28.

(h) See stat. 14 & 15 Vict. c. 94, s. 27.

(i) There is no form given by the schedule to set aside judgment or other proceedings; but the steward has power to frame all necessary forms not supplied by the Act. See *ante*, p. 56, n. (g).

*Order to stay Proceedings.*

In the High Peak Small Barmote Court.

Between A. B., plaintiff,

and

C. D., defendant.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the court, this ——— day of ———,  
in the year 185—. By the court,

A. B., steward.

*Certiorari.*] By the 52nd section of the Act it is enacted, that no proceeding in the small barmote court shall be removed into any other court by *certiorari* or otherwise, except in the cases in such Act provided for.

But by the 29th section of the Act the court of Queen's Bench at Westminster, or any judge of any of the superior courts at Westminster, is empowered on the application of either plaintiff or defendant in any action in the small barmote court, either before or after trial, on cause shown by affidavit to the satisfaction of such court or judge that an impartial or satisfactory trial cannot be or has not been had in such barmote court, or for any other cause which to such court or judge shall seem reasonable, to allow a *certiorari* to be issued out of the said court of Queen's Bench for removing all proceedings which may have been had in such action into the said court of Queen's Bench (*k*).

When a cause is so removed, the pleadings in the court below shall stand, and need not be repeated in the Queen's Bench, and shall be of the same effect there as in the court below, and if the pleadings are not complete in the court below, the same pleadings shall be adopted and with the like effect in the Queen's Bench as might have been adopted in the court below; and the Queen's Bench shall give the same judgment, as it shall to the said court appear ought to have been given, if the cause had been determined in the court below (*l*), and the court of Queen's Bench, or any judge of one of the superior courts may otherwise deal with the said causes when removed, and make such rules and orders in, or relating to, the same, as to them or him may seem just; and all

(*k*) See *ante*, p. 56.

(*l*) See stat. 14 & 15 Vict. c. 94, s. 30.

rules or orders made by any such judge, shall be liable to be enforced, set aside, or varied by the Queen's Bench in the same way as judges' orders may ordinarily be enforced, set aside, or varied (m). When judgment is given in the Queen's Bench, a copy of such judgment, signed by one of the masters of the court, should be lodged with the steward, and which shall thereupon become a record of the court below, from which the cause was removed; and such a judgment shall and may be enforced by the last-mentioned court in the same way as if the judgment had been given by such court, and the cause had never been removed (n).

*Execution.*] By section 32 it is enacted, that where a plaintiff obtains judgment in an action of title, and the defendant shall refuse, for the space of three days next after the day on which such judgment is given, to deliver possession to the plaintiff, the plaintiff may apply to the steward, who, upon payment of his fee of 2s. 6d. (o) must thereupon issue a warrant in the following form:—

*Warrant for Recovery of Possession (p).*

In the High Peak Small Barmote Court.

Between A. B., plaintiff,  
and

C. D., defendant.

Whereas after the hearing of this cause it was, on the ——— day of ———, at a court holden at ———, within the jurisdiction of this court, adjudged that the said plaintiff should recover against the said defendant possession of a certain mine at ———. And whereas the said defendant has not delivered up possession of the said mine, and three days have elapsed since such judgment was recovered: You are therefore required to give possession of the said mine to the said plaintiff.

Given under the seal of the court, this ——— day of ———.  
To the barmaster of the } By the court,  
High Peak. } A. B., steward.

(m) See stat. 14 & 15 Vict. c. 94, s. 30.

(n) See stat. 14 & 15 Vict. c. 94, s. 30.

(o) See 3rd schedule to 14 & 15 Vict. c. 94.

(p) This form is given by the 2nd schedule to 14 & 15 Vict. c. 94. See further as to warrants, *post*, p. 71.

The barmaster to whom such warrant should be delivered is bound to execute it forthwith, and deliver possession accordingly. No entry or seizure under any such warrant shall be made on a Sunday, Good Friday, or Christmas-day, or on any day appointed for a public fast or thanksgiving, or at any time except between the hours of nine in the morning and four in the afternoon (*q*).

Also where a defendant shall for the space of three days after the day whereon judgment is given, or order made, omit to pay any debt or damages recovered or awarded to be paid by any judgment of the small barmote court;

Or where either plaintiff or defendant shall for the space of three days omit to pay any money or costs recovered or awarded to be paid by any such judgment, or by any order made by the steward;

Or where any person shall omit to pay any penalty imposed by the steward under the authority of the stat. 14 & 15 Vict. c. 94, within the time appointed by the steward for payment thereof: the steward is by such statute empowered and required upon the application of the party in whose favour or for whose benefit such judgment or order shall have been given or made, or in case of a penalty at his own discretion, and upon payment of his fee of 2s. 6d. (*r*), to issue the necessary warrant in one of the following forms (*s*), according to the nature of the case:—

*Execution against the Goods of Defendant (t).*

In the High Peak Small Barmote Court.

Between A. B., plaintiff,  
and

C. D., defendant.

Whereas at a small barmote court duly holden at ———, within the jurisdiction of the said court, before the steward of the said court, the said plaintiff, by the judgment of the said court, on the ——— day of ———, recovered against the said defendant the sum of £ ———, for a certain debt before that time due and owing to the said plaintiff [or for certain damages by him sustained, or possession of a certain mine situate, &c.], together with the sum of £ ———, for costs of the suit by the said plain-

(*q*) See stat. 14 & 15 Vict. c. 94, s. 32, app.

(*r*) See 3rd schedule to 14 & 15 Vict. c. 94.

(*s*) See stat. 14 & 15 Vict. c. 94, s. 32, app.

(*t*) This form is given by the 2nd schedule of 14 & 15 Vict. c. 94.

tiff in that behalf expended: And whereas three days have elapsed since the day on which such judgment was given: And whereas the sum of £——, or the sum of £——, being part of the said sum of £——, has not been paid to the said plaintiff: These are therefore to require and order you forthwith to make and levy the said sum of £——, together with the lawful fees and expenses allowed by the "High Peak Mining Customs and Mineral Courts Act, 1851," by distress and sale of the mineral property of the said defendant wheresoever it may be found within the jurisdiction of this court.

Given under the seal of the court, this —— day of ——.  
 To the barmaster of the } By the court,  
 High Peak. } A. B., steward.

*Execution against the Goods of Plaintiff (u).*

In the High Peak Small Barmote Court.

Between A. B., plaintiff,  
 and  
 C. D., defendant.

Whereas at a small barmote court duly holden at ——, within the jurisdiction of the said court, the said defendant on the —— day of ——, by the judgment of the said court, recovered against the said plaintiff £——, for his costs of defence of an action of title, trespass, or debt: And whereas three days have elapsed since the day on which such judgment was given: And whereas the said sum of £—— has not been paid to the said defendant: You are therefore required to make and levy the said sum of £——, together with the lawful fees and expenses allowed by the "High Peak Mining Customs and Mineral Courts Act, 1851," by distress and sale of the mineral property of the said plaintiff wheresoever it may be found within the jurisdiction of this court.

Given under the seal of the court, this —— day of ——.  
 To the barmaster of the } By the court,  
 High Peak. } A. B., steward.

And the barmaster to whom such warrant should be delivered

(u) This form is given by the 3rd schedule of stat. 14 & 15 Vict. c. 94. See further as to warrants, *post*, p. 71.

is bound forthwith (v) to take possession of any mineral property (w) within the *jurisdiction of the said* barmote courts, which shall belong to the party so omitting to pay such debt or damages, or money, or costs, or penalty, and shall sell the same either by ticket or by public auction, or so much thereof as may be necessary to raise the sum mentioned in such warrant, and the fees and expenses allowed by this Act for executing the same, and shall return any surplus monies arising from such sale that may remain, after paying such debt or damages, or money, or costs, or penalty, and fees and expenses as aforesaid to the defaulter.

And if the party against whom the warrant issues has, before the issuing of such warrant, in fact paid the debt, damages, money, costs, or penalty, or any part thereof, and the warrant issues for too much, the steward shall not, therefore, be liable to any action, except in cases where he issues the warrant of his own motion and with knowledge of the payment; but the party who sues out the warrant, or the steward, if he issues it of his own motion and with such knowledge as aforesaid, shall be alone responsible in such cases for the improper issuing of the warrant, and for what is done thereunder.

And in case the person against whose mineral property (x) such warrant shall have been issued shall not have any mineral property (x) within the jurisdiction of the said barmote courts, or not sufficient to answer the amount mentioned in such warrant, after deducting such fees and expenses as aforesaid, it shall be lawful for the person who shall have obtained such judgment or order, or in case of a penalty, for the steward to recover the amount or deficiency by action of debt in the county court, if the amount of the debt or deficiency shall not exceed fifty pounds, otherwise in any superior court at Westminster.

(v) As to the days upon which the warrant is not to be executed, see *ante*, p. 68, and app. 14 & 15 Vict. c. 94, s. 32.

(w) By stat. 14 & 15 Vict. c. 94, s. 2, it is enacted that the words "mineral property" shall include mines and veins of lead, and parts of, or shares in, any such mines or veins, and the works, rights, and appurtenances connected therewith; and also lead ore, and all tools, materials, goods, chattels, and effects used in searching for, getting, cleansing, and preparing lead ore, whether such tools, materials, goods, chattels, or effects, be or be found in or upon any mine, or works, or elsewhere.

(x) See stat. 14 & 15 Vict. c. 94, s. 2, and *supra*, n. (w).

The certificate of the steward of the amount of the debt or damages, or money, or costs, or penalty, or of the proportion thereof, which has not been recovered under such warrant, shall be evidence, but not conclusive evidence, that the sum therein mentioned to be not recovered was due and unpaid at the date of such certificate; and the count in the declaration in any such action in one of the superior courts may be simply to the effect that the defendant was indebted to the plaintiff in a sum of money, naming it, by virtue of the Act 14 & 15 Vict. c. 94, and of a certificate thereunder granted by the steward of the barmote courts of the High Peak, which sum the defendant had not paid (y).

Also by section 41 it is enacted, that if the party against whom an execution shall be issued shall, before an actual sale of the property seized pay or cause to be paid or tendered unto the barmaster the sum or sums of money ordered to be levied, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees allowed by the said Act of 14 & 15 Vict. c. 94, the execution shall be superseded, and the property of the said party be discharged and set at liberty (z).

### SECTION THE THIRD.

This section contains those matters relating to such interlocutory and other proceedings, as warrants, interpleader powers, &c., &c., which the legislature has thought necessary to ensure the due working of the Act. This section will be treated in the following order, i. e. :—

Warrants.....	page 71	Registry of summonses,	
Interpleader.....	73	&c. ....	page 76
Limitation of actions....	75	Inspection of documents,	
Costs .....	75	&c. ....	76
		Penalties .....	77

*Warrants.*] By section 33rd, it is enacted that all warrants issued by the steward, shall be in force for one calendar month from the date thereof, and shall be returned by the barmaster to

(y) See stat. 14 & 15 Vict. c. 94, s. 32.

(z) See stat. 14 & 15 Vict. c. 94, s. 41.



the steward, within six weeks from the date thereof, with a memorandum or return in the following form endorsed thereon and signed by the barmaster, stating when it was executed, &c.

*Barmaster's Return of Execution of any Warrant (a).*

I, *A.B.*, barmaster of the High Peak, in obedience to the within-written warrant, and by authority of the same, did on the ——— day of ———, 185—, execute the same [by delivering to the plaintiff within named possession of, &c.], or [by levying the sum of £——— within mentioned, together with £———, the fees and expenses allowed for the execution thereof, by sale of, &c.], and the said sum of £———, has been applied by me in discharging the fees and expenses of the said levy, and the said sum of £———, has been paid by me to ———

As witness my hand, this ——— day of ——— 185—.

The following is a list of barmaster's fees, provided by the 3rd schedule of the Act to be allowed on taxation for executing any warrant issued by the steward:—

1st. Where the amount to be levied shall be less than 20*l.* :

	£	s.	d.
Seizing the property - - -	0	3	0
Each man in possession, per day -	0	2	6
All expenses of advertisements, if any -	0	10	0
Catalogues, sale and commission and delivery of goods, 1 <i>s.</i> in the pound on the produce of the sale.			

2nd. Where the amount to be levied shall exceed 20*l.* :

Seizing the property - - -	0	10	0
Each man in possession, per day -	0	2	6
All expenses of advertisements, if any -	1	1	0
Catalogues, sale and commission and delivery of goods, 1 <i>s.</i> in the pound, on the produce of the sale.			

If, however, from any cause the barmaster shall have been unable to execute the warrant, then the return should in the following form state why it has not been executed.

(*a*) This form is given by the second schedule to the 14 & 15 Vict. c. 94.

*Return that Barmaster has been unable to execute any Warrant (b).*

I, A. B., barmaster of the High Peak, do make this return to the steward of the High Peak barmote court within mentioned, and declare, that I have not yet been able to execute the within warrant, by reason that the within-named defendant hath no mineral property within the jurisdiction of this court, *or, if part only has been levied*, that I have levied the sum of £——— and no more, by sale of the mineral property of the within-named plaintiff, *or defendant*, and he hath no mineral property within the jurisdiction whereof I can levy any part of the residue. As witness my hand, this —— day of ——, 185—.

If a warrant has been returned unexecuted, it may be renewed, and returns made from time to time, until it shall be executed. Every renewed warrant to be in force for one calendar month from the date thereof, and every return to a renewed warrant shall be made within six weeks after the re-issuing of the warrant. The omission however to return any such warrant shall not make any one a trespasser for having obeyed the same, nor is it necessary to state or prove any such return in order to justify anything done in obedience to the same (c).

*Interpleader clause.*] By section 46, it is enacted, that if any claim be made to or in respect of any mineral property (d) taken in execution under the process of any great or small barmote court, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, the steward is empowered, upon the application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to appoint and hold a small barmote court, and to issue a summons in the following form :

*Summons on Interpleader (e).*

In the High Peak Small Barmote Court.

Between A. B., plaintiff,  
and

C. D., defendant.

Whereas E. F. of ——, hath made a claim to certain mineral

(b) This form is given by the second schedule of 14 & 15 Vict. c. 94,

(c) See stat. 14 & 15 Vict. c. 94, s. 33, app.

(d) For the meaning of "mineral property," see *ante*, p. 9.

(e) This form of summons is given by the second schedule of the Act.

property which has been seized and taken in execution under and by virtue of process issuing out of this court in this action : you are therefore hereby summoned and required to be and appear before the steward of the said court at ———, on the ——— day of ———, at the hour of ———, when the said claim will be adjudicated upon, and such order made thereupon as to the steward shall seem fit.

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A. B., Steward.

*Note.*—This summons is to be served upon the party claiming the property seized, and upon the plaintiff or defendant in the action, according as the execution may have been issued on behalf of plaintiff or defendant. If the execution has been issued to levy a penalty, this form must be altered to suit the circumstances, and the summons must in that case be served upon the party owing the penalty and the claimant.

It calls before the said court, as well the party issuing such process as the party making such claim ; and upon the issuing of such summons, any action which shall have been brought in any of Her Majesty's superior courts of record, or any local or inferior court, in respect of such claim, shall be stayed, and the court in which such action shall have been brought, or any judge thereof, or if the action be in any superior court at Westminster, any judge of any of the other superior courts, on proof of the issue of such summons, and that such mineral property (*f*) was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action, after the issue of such summons by the steward ; and if either of the parties so summoned appear, the steward shall, whether the other party appear or not, adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings before him, and of the proceedings in the action prior to such summons, and of the payment of compensation to any party by any other party, as to him shall seem fit, and such order, so far as the same may be for payment of money or costs, shall be enforced in like manner as any order made in any suit brought in the small barmote court (*g*), and

(*f*) See *ante*, p. 9.

(*g*) See *ante*, p. 67—71.

so far as such order is not for the payment of money or costs, disobedience to the same may be punished in manner following : that is to say, any person considering himself aggrieved by such disobedience may complain to the steward, who is empowered thereupon to summon the disobedient party before him, and if he thinks the complaint proved, and whether the party complained of shall appear or not, order the party complained of to pay to the complaining party, such sum of money as he may think a sufficient compensation, with or without the costs of the application, at his discretion, and if he thinks the complaint not proved, he may make an order dismissing the same complaint, with or without costs, at his discretion, and the order which the steward shall make in the premises may also be enforced in like manner as any order made in the small barmote court (*h*).

*Limitation of actions.*] By section 51, it is declared, for the protection of persons acting in the execution of the Act 14 & 15 Vict. c. 94, that all actions and prosecutions to be commenced against any person, for anything done in pursuance of such Act, shall be subject to the following conditions : that is to say,—

1st. Shall be laid and tried in the county where the fact was committed.

2nd. Shall be commenced within six calendar months after the fact committed and not afterwards, or otherwise.

3rd. Notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action.

4th. No plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on behalf of the defendant.

5th. In any such action the defendant may not only plead the tender or payment into court, as the case may be, but may also plead any other plea or pleas in bar or a general demurrer.

*Costs.*] By section 53 of the Act, it is declared, that in any action brought under the provisions of the 14 & 15 Vict. c. 94, in the county court, or in any of the superior courts, the plaintiff and defendant shall respectively be entitled to recover costs in

(*h*) See stat. 14 & 15 Vict. c. 94, s. 46.

the same cases and to the same extent as they would be entitled if the action were a common action of debt, on simple contract, in the county court, or in any of the superior courts respectively (i).

*Register of summonses, &c.*] By section 44, it is enacted, that the steward is bound carefully to preserve the books and accounts mentioned in sections 5 and 14, and is also bound to cause a register of all summonses, subpoenas, orders, judgments, warrants, executions, and returns thereto, and of all penalties, and of all other proceedings of the great and small barmote courts, and of all bills of directions, cross bills of directions, opinions of the grand jury, and other proceedings on views, to be fairly entered from time to time, in a book belonging to the courts, which shall be kept at the office of the steward.

And such entries in the said book, or copies thereof, or of any of them ;

And also copies of the entries in the books and accounts mentioned in the said 5th and 14th sections of the said Act, or of any part thereof ;

And also copies of the new or additional customs, articles, rules and orders mentioned in the 56th section of the said Act, purporting to bear the seal of the court, and purporting to be signed and certified as a true copy by the steward, which copies the steward is required by the 44th section of the said Act to furnish to all persons requiring the same, upon payment of the fee in the 3rd schedule to such Act specified, which are as follows :—

For every certified copy of any proceeding in the	£	s.	d.
great or small barmote court - - -	0	5	0
For copy of any entry or accounts - - -	0	0	6

Such copies are at all times to be admitted in all courts and places whatsoever as evidence of such entries, articles, rules, and orders, and of the proceedings referred to by such entry, and of the regularity of such proceeding, without further proof (k),

*Inspection, &c. of documents, &c.*] By the 45th section of the Act, it is declared that all persons are at liberty at convenient times in the daytime, to search and examine all documents in the custody

(i) See stat. 14 & 15 Vict. c. 94, s. 53.

(k) See stat. 14 & 15 Vict. c. 94, s. 44.

of the steward, by virtue of the said Act of 14 & 15 Vict. c. 94, upon payment of the following fees (l).

For a certified copy of any proceeding in the great	£	s.	d.
or small barmote court - - - -	-	0	5 0
For copy of any entry or accounts - - - -	-	0	0 6
For any search amongst or examination of the documents in the custody of the steward - - - -	-	0	1 0

*Penalties.]* The Act 14 & 15 Vict. c. 94, empowers the steward to impose penalties upon parties committing certain acts in the Act mentioned. Such a penalty the steward is by the 2nd schedule of the Act authorized to impose in the following form.

*Form for imposing any Penalty which may be imposed under the Act.*

I, ———, steward of the High Peak barmote courts, do hereby, by virtue of the High Peak Mining Customs and Mineral Courts Act, 1851, impose on C.D. ———, the sum of £———, as a penalty for an offence by him committed against the said Act, and I order him to pay the said sum to ——— on or before the ——— day of ———, in the year of our Lord 185—.

Given under the seal of the court, this ——— day of ———, 185—.

A. B. Steward.

By section 47, it is enacted, that all penalties imposed by virtue of the 14 & 15 Vict. c. 94 (except the penalties imposed upon the barmaster, and which are otherwise provided for), shall be recovered by levying the same, under a warrant of the steward, in the following form, upon the mineral property (m) of the person upon whom such penalty is imposed, which shall be within the jurisdiction of the barmote court.

*Warrant to levy any Penalty or Sum of Money that may be imposed or ordered to be paid under the Act (n).*

Whereas on the ——— day of ———, a certain sum of £——— was ordered to be paid by A. B. to C. D. by the steward of the

(l) 14 & 15 Vict. c. 94, s. 45, and 3rd schedule.

(m) As to the meaning of the term "mineral property," see *ante*, p. 9.

(n) This form is given by the 2nd schedule of the Act.

High Peak barmote courts, or a certain penalty of £—— was imposed upon A. B. by the steward of the High Peak barmote courts, for an offence against the High Peak Mining Customs and Mineral Courts Act, 1851, and such sum of £——, or penalty was ordered to be paid to ——, on or before the —— day of ——, and the same has not been paid.

You are therefore required to levy on the mineral property of the said A. B. within the jurisdiction of the said barmote court the said sum of £——, or penalty of £——, together with the lawful fees and expenses allowed by the "High Peak Mining Customs and Mineral Courts Act, 1851."

Given under the seal of the court, this —— day of ——, in the year 185—.

To the barmaster of the }  
High Peak.

A. B., Steward.

If the barmaster shall make a return to the steward that there is no mineral property (o) within such jurisdiction, or not sufficient to raise the whole of the penalty, and the fees and expenses allowed for the execution of the warrant, then such penalty, or so much thereof as the produce of the sale of such mineral property (o) shall not, after paying the fees and expenses allowed for the execution of the warrant, be sufficient to satisfy, shall be recovered by action of debt in the county court; such action to be brought in the name of the steward, and a certificate signed by him and sealed with the said seal, certifying the imposition of such penalty, and the amount thereof, or so much thereof as shall not have been satisfied by such execution, shall be evidence, but not conclusive evidence, that the sum therein mentioned not to be recovered, was due and unpaid at the date of the certificate (p).

In order to the due application of any penalty imposed and levied under the 14 & 15 Vict. c. 94, it is by the 50th section of such Act enacted, that an account shall be kept by the steward, of all penalties imposed upon any person under the authority of this Act; and such penalties shall, except in cases where it is by such Act otherwise provided, be received by or on account of the said steward, and shall be paid by the said steward, when received, as to one moiety thereof, to the Queen and her successors

(o) See *ante*, p. 78, n. (m).

(p) See 14 & 15 Vict. c. 94, s. 47.

in right of her said duchy of Lancaster, and as to the other moiety thereof, to the lessee for the time being of the duties of lot and cope, if there shall be any such lessee, and if there shall be no such lessee, then the whole of such penalties shall be paid to the Queen and her successors in right of her said duchy of Lancaster; and if any action or other proceedings other than an execution under the warrant of the said steward, shall be necessary for the recovery of any penalty, such action or other proceedings shall be taken in the name of the steward (q).

(q) See 14 & 15 Vict. c. 94, s. 50.





## APPENDIX.

### THE HIGH PEAK MINERAL CUSTOMS AND MINERAL COURTS ACT, 1851.

14 & 15 VICT. c. 94.

*An Act to define and amend the Mineral Customs of certain parts of the hundred of High Peak in the county of Derby, part of the possessions of Her Majesty's Duchy of Lancaster; to make provision for the better administration of justice in the Barmote Courts therein; and to improve the practice and proceedings of the said Courts.*

[7th August, 1851.]

WHEREAS the Queen in right of her duchy of Lancaster is seised to her and her heirs and successors of and in the hundred of *High Peak* in the county of Derby, and is entitled to the mineral duties in certain parts of the hundred of *High Peak*: The Queen seised of the hundred of High Peak and certain other lands.

And whereas within the said hundred there is a district called the *King's Field*, otherwise the *King's Fee*, which consists of seven smaller liberties or districts, to wit, *Castleton, Bradwell, Hucklow, Winster, Moniasb, Taddington, and Upper Haddon*: Districts composing the King's Field.

And whereas all the subjects of this realm have from time immemorial had or claimed to have a right to search for, sink, and dig mines or veins of lead ore within the *King's Field* aforesaid, subject to certain ancient mineral laws and customs, mine. and upon paying certain duties to the Queen and her predecessors, and her and their lessees for the time being: Immemorial right of subjects of this realm to mine.

And whereas for the regulation of the said mines, and for deciding questions of title and other matters relating thereto, there have existed within the *King's Field* aforesaid certain courts called the great barmote court and the small barmote court: Barmote courts of King's Field.

And whereas the mineral laws and customs of the *King's Field* aforesaid are uncertain and undefined, and are in many respects inapplicable to the present mining operations within the *King's Field* aforesaid: Present mineral laws of Derbyshire inapplicable to present mode of mining.

And whereas doubts have arisen whether the jurisdiction of the barmote courts extends over such parts of the said hundred of *High Peak* within which the Queen is entitled to the mineral duties, but which are not included in the *King's Field* aforesaid, although the same rights of mining are exercised therein: Doubts as to the jurisdiction of barmote courts.

Advisable to amend mineral laws, &c. &c. And whereas it is advisable that the said mineral laws and customs should be revised, altered, and amended so as to be made applicable to the present state of mining operations within the said hundred, and that the jurisdiction of the said great and small barmote courts should be more clearly defined and settled :

Duke of Devonshire lessee. And whereas *William Spencer* duke of *Devonshire* is the lessee of the said duties by grant under the seal of the duchy of *Lancaster*: Be it therefore enacted, as follows :

Short title of Act. I. That in citing this Act in other Acts of Parliament, and in legal instruments and on all other occasions, it shall be sufficient to use the expression "*The High Peak Mining Customs and Mineral Courts Act, 1851*," and that the schedules to this Act shall be considered as forming part thereof.

Interpretation clause. Words. II. That in construing this Act, the following words and expressions shall have the meaning hereby assigned to them, unless there be something in the context of the Act repugnant to such construction; that is to say,

Steward. County court. The word "steward" shall mean deputy steward :  
The words "county court" shall mean any county court having jurisdiction over any part of the district over which the barmote courts have jurisdiction by this Act :

Gift. The word "gift" shall mean the setting out by the barmaster of any ground in manner hereinafter provided :

Founder. Founder meers. The word "founder" shall mean the point at which a vein of ore shall be first found; and the words "founder meers" shall mean the two first meers to be set out to the finder under the provisions of this Act :

Mine or mines. Vein or veins. The words "mine or mines, vein or veins," shall mean a mine or mines, vein or veins, of lead ore, and shall include parts of or shares in any mine or vein as well as entire mines and veins, and all minerals containing lead ore :

Ore. The word "ore" shall mean lead ore and belland exclusively :

Barmaster. Mineral property. The word "barmaster" shall include deputy barmasters :  
The words "mineral property" shall include mines and veins of lead, and parts of or shares in any such mines or veins, and the works, rights, and appurtenances connected therewith, and also lead ore, and all tools, materials, goods, chattels, and effects used in searching for, getting, cleansing, or preparing lead ore, whether such tools, materials, goods, chattels, or effects be or be found in or upon any mine or works or elsewhere.

Appointment of steward of the barmote courts. Qualification. III. From and after the passing of this Act (a) it shall be lawful for the Queen and her successors to nominate and appoint, from time to time, by letters patent under the seal of the duchy of *Lancaster*, a fit and proper person, being a barmaster-at-law of five years standing, or a member of one of the inns of court who has practised as a special pleader for ten

(a) The Act was passed on the 7th August, 1851.

years, or an attorney or solicitor of some of the superior courts of law or equity at *Westminster* of seven years standing, to be and to be called the steward of the *High Peak* barmote courts, and such steward shall hold his office during the will and pleasure of Her Majesty and her successors.

Duration of office.

IV. It shall be lawful for the steward to appoint from time to time a deputy steward qualified to be appointed steward of the said court, to act for him at any time when he shall be prevented by illness or unavoidable absence from acting in such office, and to remove such deputy at his pleasure, and such deputy while acting under such appointment shall have the like powers and privileges, and be subject to the like provisions, duties, and penalties for misbehaviour, as if he were the steward of the court for the time being.

Steward may appoint a deputy.

Duration, &c. of office.

V. The duties of the said steward shall be to receive and enter plaints in a book to be kept by him for that purpose, which may be in the form comprised in the second schedule to this Act; to issue summonses, to hold and preside at the great and small barmote courts; to issue precepts under his hand to the barmaster for summoning the attendance of the grand jury on views and at the great barmote courts, and also precepts to the barmaster, for summoning and empannelling jurors for the trials of causes at the small barmote courts; to administer oaths to the barmaster, deputy barmaster, jurors, witnesses, or other persons (at and out of the great and small barmote courts); to preside as judge on the trial of causes at the small barmote courts; to tax costs in all cases where by this Act costs are or may be given; to attend and preside at views; to sign and issue subpoenas for the summoning of witnesses and the process of the courts, both meane and final, and all rules and orders of the courts, and warrants for enforcing the judgments of the courts, and levying penalties; to make returns to writs of *certiorari*; to advise the barmasters and grand juries and other juries upon matters of law, and all other matters connected with their respective duties; to affix the seal of the barmote courts to such documents as require the same; to hear and determine applications to the courts which do not require the intervention of a jury, and to make orders thereon, upon such terms as to the payment of costs by either party or otherwise as may to him seem just; to keep the verdicts, judgments, books, and proceedings of the great and small barmote courts, and the seal of the said courts, and also all books and accounts herein-after provided to be kept and delivered to the steward by the barmaster, safe and in good condition, and to deliver up the same to Her Majesty and her successors whenever required; and generally to do and perform such other acts and duties as are in this Act mentioned as acts and duties to be performed by the steward.

Duties of steward.

Summonses. Courts. Precepts.

Oaths.

Judge.

To tax costs. Views.

Subpoenas.

Returns to writs of *certiorari*.

To advise barmasters, &c. Seal.

To keep verdicts, &c. &c.

VI. Two great barmote courts shall be held every year, one on the first *Tuesday* in the month of *April*, and the other on

Great barmote courts

to be held,  
when and  
where.

Small bar-  
mote courts  
to be held,  
when and  
where.

Business at  
barmote  
courts.

Seal of the  
courts.

Appointment  
of barmas-  
ters.

Appointment  
of deputy  
barmasters.

Duration of  
office.

the first *Tuesday* in the month of *October*, but if the first *Tuesday* in *April* be in *Passion* week or *Easter Tuesday*, or a day appointed for a public fast or thanksgiving, then such court shall be held on the *Tuesday* next after, instead of being holden on such first *Tuesday*; and small barmote courts shall be held from time to time as occasion shall require, but not on the days appointed for the holding of the great barmote courts; the great barmote courts shall be held at *Monyash* in the county of *Derby*, and the small barmote courts at any place within the jurisdiction of the said courts which may be appointed by the steward, which place may be varied at any time or from time to time.

VII. The matters to be transacted at the great barmote courts shall be the swearing in of the grand jury, and such other matters as are in this Act mentioned as being matters to be transacted at the great barmote courts; and the matters to be transacted at the small barmote courts shall be the trial of actions of title, trespass, and debt, and such other matters as are in this Act mentioned as being matters to be transacted at the small barmote courts.

VIII. There shall be a seal or stamp provided by the steward, with the words, "The Seal of the *High Peak* Barmote Courts" thereon, and all proceedings in the great and small barmote courts which are required to be signed by the steward shall be sealed or stamped therewith.

IX. It shall be lawful for the Queen and her successors to appoint during pleasure only (by letters patent under seal of the duchy of *Lancaster*) a fit and proper person to serve the office of barmaster of the district within the jurisdiction of the barmote courts, and to be called the barmaster of the *High Peak*; and the barmaster for the time being may (with the consent in writing of the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee then with the consent in writing of the Queen or her successors, or of the chancellor for the time being of the duchy of *Lancaster*), nominate seven fit and proper persons to serve the office of deputy barmaster, one for each of the seven smaller liberties or districts aforesaid; and the deputy barmaster for the time being of the liberty or district of *Castleton* shall be also the deputy barmaster for such part of the hundred of *High Peak* aforesaid as is now vested in the Queen in right of her duchy of *Lancaster*, but is not within the *King's Field*; and such deputy barmasters shall respectively continue in office during the continuance in office of the barmaster by whom they were appointed, or until they shall be removed as herein-after mentioned: (b) Provided always, that the barmaster may, with such consent as aforesaid, appoint the same person to act as

(b) See sect. 11 as to the removal of deputy barmaster by the lessee of the mineral duties.

deputy barmaster for any two or more of the said smaller liberties.

X. The barmaster shall not be answerable for the Acts of the deputy barmasters.

Barmaster not to be answerable for his deputies.

XI. It shall be lawful for the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee then for the chancellor for the time being of the duchy of *Lancaster*, to remove any deputy barmaster from his office at the pleasure of such lessee and chancellor respectively.

Removal of deputy barmasters.

XII. The barmaster and deputy barmasters respectively may act as such without being sworn, but shall, before or at the great barmote court next after their respective appointments, be respectively sworn well and truly to serve the office to which they are appointed, or such appointment shall be void.

Barmaster and deputy barmasters to take oaths.

XIII. The duties of the barmaster shall be to execute all such precepts and warrants as shall be directed to him, and signed by the steward and sealed with the said seal, to attend on views with the steward and deputy barmaster of the district in which the mine to be viewed is situate, and where there is no deputy appointed for any district, to perform all the duties of the office of deputy of such district until a deputy is appointed, and generally to do and perform such other acts and duties as are in this Act mentioned as being acts or duties to be done or performed by the barmaster.

Duties of barmaster. To execute precepts, warrants, &c.

To attend views, and to perform the office of deputy when none appointed.

XIV. The duties of the deputy barmasters, whether the barmaster be absent or present, shall be, to serve summonses in actions in the small barmote court relating to mineral property within their respective districts; to serve summonses on jurors within their respective districts; to attend views on mines within their respective districts; to collect the dues payable within their respective districts to the Queen and her successors, or to her or their lessee for the time being, and to keep accounts of such dues; to keep a book, and make therein written entries and particulars of all meers of ground which shall be measured and set out by them under the provisions of this Act, and also of all transfers of mines which may be made as herein-after provided, and also of all freeings and other matters connected with the mines within their respective districts; to sign such book, and to deliver the same half-yearly, together with a fair copy of the aforesaid accounts and entries, also signed by them respectively, each such half-yearly account to end with the twenty-fifth of *March*, or twenty-ninth of *September*, to the steward at the great barmote court next after the day to which such accounts shall be made up, or, with the consent of the steward, at any adjournment of the said court, to produce any such book, and to make and deliver other fair copies of the aforesaid accounts at any other time, upon demand being made by the steward for the production of

Duties of deputy barmasters.

To serve summonses.

To attend views.

To collect dues.

To keep accounts.

Entries.

Transfers.

Freeings.

And sign the book containing them.

To produce it.

And generally in absence of barmaster to perform his duties.

any such book, or for any such copy; and (in all other cases in which the barmaster shall not be present and choose to perform such duties in person) to perform within their respective districts all such duties as are in this Act mentioned as forming part of the duties or business of the barmaster, and generally to assist the barmaster, when required by him so to do, in any other matters forming part of or connected with the duties of barmaster, whether in their own districts or elsewhere within the jurisdiction of the barmote courts.

Barmote courts to be courts of record.

XV. The great barmote court and the small barmote court shall be courts of record, and the steward shall be judge of each of them, and may out of court do all such acts of the courts respectively as do not require the presence of a jury.

Territorial jurisdiction of barmote courts and of mineral laws and customs.

XVI. The jurisdiction of the said great and small barmote courts and of this Act shall be held to extend over the whole of the before-mentioned district called the *King's Field*, and also over all the parts of the hundred of *High Peak* aforesaid in which the Queen in right of her duchy of *Lancaster* is entitled to the mineral duties, and the mineral laws and customs of that part of the said hundred over which the jurisdiction of the said great and small barmote courts is hereby declared to extend shall be such as are mentioned and comprised in this Act, and no other alleged custom or practice shall be valid.

Practice of barmote courts.  
Grant time.

Adjourn courts or hearing.

Adjournment.  
When.

*Dies non.*

XVII. The steward may in any case, and upon such terms as to the payment of costs by either party or otherwise as to him shall seem just, make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of any action, and also may from time to time adjourn any great or small barmote court, or the hearing or further hearing of any cause or other proceeding in the said courts or either of them, or before the steward, in such manner as to the steward may seem fit, and when any court is adjourned, the grand jurymen and other jurymen who shall have been summoned to such court shall attend at the adjourned court without any further summoning, and shall be liable to the same penalties for not attending at an adjourned court as for not attending upon a summons: Provided always, that the further hearing of any cause or other proceeding of which the hearing shall have been commenced, and in which any evidence shall have been given, shall not be adjourned for any longer period than until the day next after that on which the adjournment takes place, or if such next day be *Sunday, Good Friday, Christmas Day*, or any day appointed for a public fast or thanksgiving, then until the day next but one after that on which the adjournment takes place.

Examination of parties.  
Their wives,  
&c. &c.

XVIII. On the hearing or trial of any action, or on any other proceeding under this Act, the parties thereto, their wives, and all other persons, may be examined upon oath or solemn affirmation in those cases in which persons are by law

allowed to make affirmation instead of taking an oath, such oath or affirmation to be administered by the steward.

XIX. Every person who in any examination upon oath or solemn affirmation before the said steward shall wilfully and corruptly give false evidence shall be deemed guilty of perjury, and shall be liable to be indicted and subject to the same punishments as may be imposed on persons guilty of perjury in any of the superior courts of *Westminster*. False evidence, perjury.

XX. If any person appearing as a witness shall refuse to give evidence or to answer any lawful question, it shall be lawful for the steward to impose upon any such person such penalty not exceeding ten pounds as the said steward shall think fit. Penalty for refusing to give evidence.

XXI. If any person shall wilfully insult the steward or either of the said courts, or create any disturbance during the sitting of any great or small barmote court, or at any view, or shall insult or obstruct the barmaster at any time when in the execution of his office, it shall be lawful for the said steward to impose upon any such person such penalty not exceeding ten pounds as the said steward shall think fit, and the steward shall fix a day on or before which, and a person to whom, such penalty shall be paid. Penalty for insulting steward or either of the courts, or the barmaster.

XXII. From and after the passing of this Act the grand jury shall consist of twelve men only, who shall be selected by the barmaster from amongst persons resident within the jurisdiction of the said great and small barmote courts, and as far as conveniently can be done it shall be the duty of the barmaster to select persons experienced in practical mining, but a want of such experience shall be no ground of objection to any person serving on the grand jury if summoned so to do, nor of exemption from such service; and the grand jury shall be composed in manner herein-after stated, that is to say, of one man from the liberty of *Castleton*, of two men from the liberty of *Bradwell*, of two men from the liberty of *Hucklow*, of two men from the liberty of *Winster*, of two men from the liberty of *Monyash*, of one man from the liberty of *Taddington*, of one man from the liberty of *Upper Haddon*, and of one man from such parts within the jurisdiction of the said great and small barmote courts as are not within any of the aforesaid liberties; and at the second great barmote court which shall be held after the passing of this Act six of the grand jury, to be determined by lot, shall be discharged, and six new grand jurymen substituted, and at every subsequent great barmote court six of the grand jury, being those who have been longest in office, shall be discharged and six new grand jurymen shall be substituted in their stead, so that every member of the grand jury shall serve for a period extending over the holding of two great barmote courts; and no person shall be compellable to serve on the grand jury oftener than once in three Appointment of grand jury. Qualifications. From what districts. Discharge of.



years ; and as often as any of the grand jury shall die or become incompetent to act, the barmaster shall select another person in his place, without waiting for the holding of a great barmote court, and every member of the grand jury shall be sworn in by the steward as soon as conveniently may be, either at a great or small barmote court or out of court, as may be most convenient, but every such member shall be competent to act immediately upon his appointment as one of the grand jury, without waiting for being sworn as aforesaid.

**Sworn.** XXIII. The duties to be performed by the grand jury may in cases where no other provision is made by this Act be performed by any eight of the body, and such duties shall be to attend at the great barmote courts, and at any other time upon the summons of the barmaster or of any deputy barmaster, such summons to be delivered to all the members of the grand jury, or to be left at their respective last or usual places of abode, at least three days before the day on which their attendance is required to go down into any mine, vein, or mineral works, and view the same, and give their opinion on such matters as are required of them in any bill of directions or cross bill delivered to them, and generally to do and perform all such acts and duties as are in this Act mentioned as being acts to be done or duties to be performed by the grand jury.

**Duties of grand jury.**

**To attend great barmote courts.**

**Views.**

**And perform other duties mentioned in Act.**

XXIV. The steward shall, upon the entering of any plaint, cause a summons to be issued, and shall, on a day to be mentioned in such summons, and within one calendar month after the entering of the plaint, hold a small barmote court for the trial of the cause ; and the plaintiff and defendant, or their respective attornies or agents, shall appear at the time and place appointed for the trial, and the steward shall proceed in a summary way to try the cause, leaving all matters of fact in issue in the cause to be determined by the jury sworn for the trial, and shall give judgment, and the judgment of the court shall be enforced by warrant to be issued under the hand of the steward and the seal of the barmote courts, and the defendant shall be allowed to give evidence of any special matter of defence.

**Practice of small barmote courts.**

**Plaint.**

**Summons.**

**Hearing.**

**Judgment.**

**Warrant.**

**Evidence.**

XXV. The summons shall be served upon the defendant by the barmaster fourteen clear days at least before the day appointed for the trial, by leaving such summons at the usual or last place of abode of such defendant, and by affixing a copy thereof on some conspicuous part of the mine to which the question of title, trespass, or debt to be tried has reference ; and upon proof of the service of such summons the plaintiff shall be at liberty, if the defendant do not appear, to proceed to trial, and if the steward shall think that he is entitled to recover, he shall have judgment : Provided always, that in cases where there are more defendants than one, service on one of such defendants shall be deemed sufficient.

**Service of summons.**

**In case defendant shall refuse to appear or plead.**

**Proviso when more than one defendant.**

XXVI. If the plaintiff in any action of title, trespass, or debt shall not proceed to trial at the time and place appointed, the steward shall cause judgment as in case of nonsuit to be entered for the defendant in such action.

Proviso in case plaintiff shall not proceed in the action.

XXVII. The steward may grant new trials, and set aside judgments and other proceedings, and may stay proceedings, and in so doing he is hereby directed to act as far as may be on the same principles as are acted upon in similar cases by the superior courts at *Westminster*.

New trials. Set aside and stay judgments and other proceedings.

XXVIII. The party who has judgment in his favour, in whatever way such judgment may be obtained, shall by the same judgment recover his costs of suit or defence, as the case may be.

Costs.

XXIX. It shall be lawful for the court of Queen's Bench at *Westminster*, or for any judge of any of the superior courts at *Westminster*, on the application of either plaintiff or defendant in an action in the small barmote court, either before or after trial, on cause shown by affidavit to the satisfaction of such court or judge that an impartial or satisfactory trial cannot be or has not been had in such barmote court, or for any other cause which to such court or judge shall seem reasonable, to allow a *certiorari* to be issued out of the said court of Queen's Bench for removing all proceedings which may have been had in such action into the said court of Queen's Bench.

Certiorari to remove cause either before or after trial into Queen's Bench at Westminster.

XXX. When a cause is so removed, the pleadings in the court below shall stand and need not be repeated in the Queen's Bench, and shall be of the same effect there as in the court below, and if the pleadings are not complete in the court below the same pleadings shall be adopted and with the like effect in the Queen's Bench as might have been adopted in the court below, and the Queen's Bench shall give the same judgment as it shall to the said court appear ought to have been given if the cause had been determined in the court below, and the Queen's Bench or any judge of one of the superior courts may otherwise deal with the said causes when removed, and make such rules and orders in or relating to the same, as to them or him may seem just; and all rules or orders made by any such judge shall be liable to be enforced, set aside, or varied by the Queen's Bench in the same way as judges' orders may ordinarily be enforced, set aside, or varied; and when judgment is given in the Queen's Bench, a copy of such judgment, signed by one of the masters of the court, may be lodged with the steward, and shall thereupon become a record of the court below from which the cause was removed, and shall and may be enforced by the last-mentioned court in the same way as if the judgment had been given by such court and the cause had never been removed.

When cause removed pleadings not to be repeated.

Judgment of Queen's Bench.

Rules and orders of Queen's Bench.

Judgment of Queen's Bench to be a record of barmote court. Execution thereon.

Service of  
subpoenas on  
witnesses to  
attend trial  
in action in  
small bar-  
mote court  
good in any  
part of Eng-  
land.

Penalty for  
non-attend-  
ance.  
Attachment.

Execution  
may be issued  
against mi-  
neral prop-  
erty in an  
action of  
title, and  
possession  
given.

When entry  
or seizure not  
to be made.

Execution  
may be is-  
sued against  
mineral prop-  
erty in an  
action of  
debt or da-  
mages upon  
non-payment  
of penalty,  
and mineral

XXXI. Every subpoena to attend and give evidence upon any trial in the small barmote court, if served personally upon the person required to give evidence in any part of *England* or *Wales* seven clear days at the least before the day fixed for the holding the court at which such trial is to be had, shall be as valid and effectual in law, and shall entitle the party suing out such subpoena to all and the like remedies by action, as if the same had been issued out of the court of Queen's Bench at *Westminster* in any cause depending in that court; and in case the person served shall not appear as required by the said subpoena, it shall be lawful for the said steward, upon oath or affirmation taken in open court of the personal service of such subpoena, and of the tender to the person so served at the time of such service of a reasonable and sufficient sum of money to defray the expenses of coming and attending to give evidence, and of returning from giving such evidence, to give to the party complaining of such default a certificate of such default under the hand and seal of the said steward, and the party complaining of such default having obtained such certificate may apply to the court of Queen's Bench at *Westminster*, and the said last-mentioned court shall thereupon (if it seems to them just to do so) proceed by attachment or otherwise, according to the course and practice of the same court, against the person so having made default, in like manner as the same court might have done if such person had neglected or refused to appear in obedience to a writ of subpoena issued to compel the attendance of witnesses out of such last-mentioned court, but such certificate shall not be conclusive either of the due service of the subpoena or of the same having been disobeyed, or of any other matter.

XXXII. Where a plaintiff obtains judgment in an action of title, and the defendant shall refuse for the space of three days next after the day on which judgment is given to deliver possession to the plaintiff, it shall be lawful for the plaintiff to apply to the steward, and the steward shall thereupon issue a warrant in the form hereinafter mentioned, and the barmaster shall forthwith execute such warrant, and deliver possession accordingly: Provided always, that no entry or seizure under any such warrant, or under the warrant next hereinafter mentioned, shall be made on a *Sunday*, *Good Friday*, or *Christmas Day*, or on any day appointed for a public fast or thanksgiving, or at any time except between the hours of nine in the morning and four in the afternoon; and where a defendant shall for the space of three days after the day when the judgment is given or order made omit to pay any debt or damages recovered or awarded to be paid by any judgment of the small barmote court, or where either plaintiff or defendant shall for the space of three days omit to pay any money or costs recovered or awarded to be paid by any such judgment or by any order made by the steward, or where any person shall omit to pay any penalty imposed by the steward under the authority

of this Act within the time appointed by the steward for payment thereof, it shall be lawful for the steward and he is hereby required, upon the application of the party in whose favour or for whose benefit such judgment or order shall have been given or made, or in the case of a penalty at his own discretion, to issue a warrant in the form hereinafter mentioned, and the barmaster shall thereupon forthwith take possession of any mineral property within the jurisdiction of the said barmote courts which shall belong to the party so omitting to pay such debt or damages, or money or costs, or penalty, and shall sell the same either by ticket or by public auction, or so much thereof as may be necessary to raise the sum mentioned in such warrant, and the fees and expenses allowed by this Act for executing the same, and shall return any surplus monies arising from such sale that may remain, after paying such debt or damages, or money or costs, or penalty, and fees and expenses as aforesaid, to the defaulter; and if the party against whom the warrant issues has, before the issuing of such warrant, in fact paid the debt, damages, money, costs, or penalty, or any part thereof, and the warrant issues for too much, the steward shall not therefore be liable to any action, except in cases where he issues the warrant of his own motion and with knowledge of the payment, but the party who sues out the warrant, or the steward if he issues it of his own motion, and with such knowledge as aforesaid, shall be alone responsible in such cases for the improper issuing of the warrant, and for what is done thereunder; and in case the person against whose mineral property such warrant shall have been issued shall not have any mineral property within the jurisdiction of the said barmote courts, or not sufficient to answer the amount mentioned in such warrant, after deducting such fees and expenses as aforesaid, it shall be lawful for the person who shall have obtained such judgment or order, or in case of a penalty for the steward, to recover the amount or deficiency by action of debt in the county court, if the amount of the debt or deficiency shall not exceed fifty pounds, otherwise in any superior court at *Westminster*; and the certificate of the said steward of the amount of the debt or damages, or money or costs, or penalty, or of the proportion thereof, which has not been recovered under such warrant, shall be evidence, but not conclusive evidence, that the sum therein mentioned to be not recovered was due and unpaid at the date of such certificate; and the count in the declaration in any such action in one of the superior courts may be simply to the effect that the defendant was indebted to the plaintiff in a sum, naming it, by virtue of this Act, and of a certificate thereunder granted by the steward of the barmote courts of the *High Peak*, which sum the defendant had not paid.

property within jurisdiction, to be sold,

By ticket or public auction. As to fees and expenses. Surplus.

When steward not liable to action.

If no mineral property within jurisdiction,

To recover an unsatisfied judgment in county or superior courts.

Evidence.

Pleading.

XXXIII. All warrants issued by the steward shall be in force for one calendar month from the date thereof, and shall be returned by the barmaster to the steward within six weeks from the date thereof, with a memorandum or return endorsed

Warrants and executions in force for one month to be

for non-attendance ; by this act required to attend, and shall not attend in pursuance of such summons, or being called shall not answer to his name, or if any such person being present after having been called shall not duly appear, or after his appearance shall wilfully withdraw himself, or shall refuse to act on the grand jury, or to perform the duties required of him, it shall be lawful for the said steward to impose such penalty, not exceeding ten pounds, upon every such person so making default, as to the said steward shall seem meet, unless some reasonable excuse shall be given to the satisfaction of the said steward, and the steward shall fix a day on or before which, and a person to whom, such penalty shall be paid ; and if such penalty shall not be paid within the time ordered by the said steward, it shall be lawful for the said steward to issue his warrant in the form herein-after mentioned for the levying thereof, with all the costs and charges attending such levying ; and such penalty may be imposed in the absence of the party making default, and without calling on him to show cause why it should not be imposed ; and it shall be no objection to the execution of such warrant that the party had no notice of such penalty ; but if any person shall think himself aggrieved by the imposition of such penalty or the execution of such warrant, the steward may grant him such relief as to the steward may seem just.

Exemption from serving on jury. XXXIX. All persons for the time being exempted by law from serving on juries shall be exempt from serving either on the grand jury or on any jury for the trial of causes in the small barmote court, notwithstanding such persons may in other respects be qualified to serve on such grand jury, or on any jury for the trial of causes as aforesaid.

Subpoenas. Where to be obtained. XL. The parties to the suit or any other proceeding under this Act may obtain at or from the office of the steward subpoenas to compel the attendance of witnesses, with or without a clause requiring the production of books, deeds, papers, and writings in their possession or control ; and in any such subpoena any number of names may be inserted, and such subpoenas shall be served upon the witnesses in like manner as subpoenas issuing out of the superior courts at *Westminster*.

Execution may be superseded on payment or agreement, and property set at liberty. XLI. If the party against whom an execution shall be issued shall, before an actual sale of the property seized, pay or cause to be paid or tendered unto the barmaster the sum or sums of money ordered to be levied, or such part thereof as the person entitled thereto shall agree to accept in full of his debt or damages and costs, together with the fees hereby allowed, the execution shall be superseded and the property of the said party shall be discharged and set at liberty.

Barmaster, deputy, or other person, XLII. No barmaster or deputy barmaster, and no person acting at the request and in aid of any barmaster or deputy

barmaster, shall be liable to any action for anything done or authorized by such barmaster or deputy barmaster in obedience or necessary for obedience to any writ, precept, warrant, or process, signed by the steward and sealed with the said seal, although the same be void or irregular or an excess of jurisdiction, nor shall any act done by any such barmaster, deputy barmaster, or other person, while acting under any such writ, precept, warrant, or process, make him a trespasser *ab initio*, though it be not in obedience or not necessary for obedience to such writ, precept, warrant, or process, but the party committing such last-mentioned act shall be liable to an action for the same if it be illegal.

not to be liable for obedience to writs, warrants, &c. : Although void.

Action against in certain cases.

XLIII. The steward shall not be liable to any action for anything done in obedience or necessary for obedience to any writ, warrant, precept, or process, signed by him, and sealed with the said seal, if such writ, warrant, precept, or process, be not an excess of his jurisdiction.

Steward not to be liable for obedience to writs, warrants, &c. if not excess of jurisdiction.

XLIV. The steward shall carefully preserve the books and accounts mentioned in the fifth and fourteenth sections, and shall also cause a register of all summonses, subpoenas, orders, judgments, warrants, executions, and returns thereto, and of all penalties, and of all other proceedings of the great and small barmote courts, and of all bills of directions, cross bills of directions, opinions of the grand jury, and other proceedings on views, to be fairly entered from time to time in a book belonging to the courts, which shall be kept at the office of the steward; and such entries in the said book, or copies thereof, or of any of them; and also copies of the entries in the books and accounts mentioned in the fifth and fourteenth sections, or of any part thereof; and also copies of the new or additional customs, articles, rules, and orders mentioned in the fifty-sixth section, purporting to bear the seal of the court, and purporting to be signed and certified as a true copy by the steward, which copies the steward is hereby required to furnish to all persons requiring the same, upon payment of the fees hereinafter specified, shall at all times be admitted in all courts and places whatsoever as evidence of such entries, articles, rules, and orders, and of the proceedings referred to by such entry, and of the regularity of such proceeding, without any further proof.

Steward to preserve books, &c. register, summonses, &c.

To furnish copies.

On payment of fees. And to be evidence.

XLV. All persons shall be at liberty, at convenient times, in the daytime, to search and examine all documents in the custody of the steward by virtue of this Act, upon payment of the fees hereinafter specified.

Documents in custody of steward to be open to inspection.

XLVI. If any claim shall be made to or in respect of any mineral property taken in execution under the process of any great or small barmote court, or in respect of the proceeds or value thereof, by any person not being the party against whom such process has issued, it shall be lawful for the steward,

Interpleader clause. As to mineral property, or the proceeds or value thereof.

Formula.	upon the application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to appoint and hold a small barmote court, and to issue a summons, calling before the said court as well the party issuing such process as the party making such claim; and upon the issuing of such summons any action which shall have been brought in any of Her Majesty's superior courts of record, or any local or inferior court, in respect of such claim, shall be stayed; and the court in which such action shall have been brought, or any judge thereof, or if the action be in any superior court at <i>Westminster</i> , any judge of any of the other superior courts, on proof of the issue of such summons, and that such mineral property was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons by the steward; and if either of the parties so summoned appear, the steward shall, whether the other party appear or not, adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings before him, and of the proceedings in the action prior to such summons, and of the payment of compensation to any party by any other party, as to him shall seem fit; and such order, so far as the same may be for payment of money or costs, shall be enforced in like manner as any order made in any suit brought in the small barmote court, and, so far as such order be not for the payment of money or costs, disobedience to the same may be punished in manner following; that is to say, any person considering himself aggrieved by such disobedience, may complain to the steward, who may thereupon summon the disobedient party before him, and may, if he thinks the complaint proved, and whether the party complained of shall appear or not, order the party complained of to pay to the complaining party such sum of money as he may think a sufficient compensation, with or without the costs of the application, at his discretion; and if he thinks the complaint not proved, he may make an order dismissing the same complaint, with or without costs, at his discretion; and the order which the steward shall make in the premises may also be enforced in like manner as any order made in the small barmote court.
Operates as stay of proceedings.	
The steward to adjudicate.	
By order.	
Proceedings upon order.	

All penalties (except those imposed upon barmaster) to be levied by warrant upon mineral property.

XLVII. All penalties imposed by virtue of this Act (except the penalties imposed upon the barmaster, and which are otherwise provided for), shall be recovered by levying the same under a warrant of the steward upon the mineral property of the person upon whom such penalty shall be imposed, which shall be within the jurisdiction of the barmote courts; and if the barmaster shall make a return to the steward that there is no mineral property within such jurisdiction, or not sufficient to raise the whole of the penalty and the fees and expenses allowed for the execution of the warrant, then such penalty, or so much thereof as the produce of the sale of such mineral property shall not, after paying the fees and expenses

If none, then by action of debt in county court.

allowed for the execution of the warrant, be sufficient to satisfy, shall be recovered by action of debt in the county court, such action to be brought in the name of the steward; and a certificate signed by him, and sealed with the said seal, certifying the imposition of such penalty and the amount thereof, or so much thereof as shall not have been satisfied by such execution, shall be evidence, but not conclusive evidence, that the sum therein mentioned not to be recovered was due and unpaid at the date of the certificate. Evidence.

XLVIII. The proceedings of the barmote courts shall be in the forms given in the second schedule annexed to this Act, or to the like effect; and in any proceeding not thereby provided for it shall be lawful for the said steward to adopt such form as he shall think fit and applicable to such proceeding. Forms of proceedings as in second schedule,

XLIX. The fees and payments which shall be paid, had, and taken by the steward, head barmaster, and deputy barmasters, grand jury, attornies, and other persons, shall be such as are contained in the third and fourth schedules to this Act, and no other fee, gratuity, or reward whatever, shall be demanded, had, or taken by any of the said persons on any pretence whatever. Fees, as in 3rd and 4th schedules, and none others to be demanded.

L. An account shall be kept by the steward of all penalties imposed upon any person under the authority of this Act, and such penalties shall, except in cases where it is by this Act otherwise provided, be received by or on account of the said steward, and shall be paid by the said steward, when received, as to one moiety thereof to the Queen and her successors in right of her said duchy of *Lancaster*, and as to the other moiety thereof to the lessee for the time being of the duties of lot and cope, if there shall be any such lessee; and if there shall be no such lessee, then the whole of such penalties shall be paid to the Queen and her successors in right of her said duchy of *Lancaster*; and if any action or other proceedings other than an execution under the warrant of the said steward shall be necessary for the recovery of any penalty, such action or other proceedings shall be taken in the name of the steward. Account and application of penalties.

LI. For the protection of persons acting in the execution of this Act, it is hereby declared, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not afterwards or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on Clause for limitation of actions. Six months. One month's notice. Tender of amends.



Formula.	upon the application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to appoint and hold a small barmote court, and to issue a summons, calling before the said court as well the party issuing such process as the party making such claim; and upon the issuing of such summons any action which shall have been brought in any of Her Majesty's superior courts of record, or any local or inferior court, in respect of such claim, shall be stayed; and the court in which such action shall have been brought, or any judge thereof, or if the action be in any superior court at <i>Westminster</i> , any judge of any of the other superior courts, on proof of the issue of such summons, and that such mineral property was so taken in execution, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons by the steward; and if either of the parties so summoned appear, the steward shall, whether the other party appear or not, adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings before him, and of the proceedings in the action prior to such summons, and of the payment of compensation to any party by any other party, as to him shall seem fit; and such order, so far as the same may be for payment of money or costs, shall be enforced in like manner as any order made in any suit brought in the small barmote court, and, so far as such order be not for the payment of money or costs, disobedience to the same may be punished in manner following; that is to say, any person considering himself aggrieved by such disobedience, may complain to the steward, who may thereupon summon the disobedient party before him, and may, if he thinks the complaint proved, and whether the party complained of shall appear or not, order the party complained of to pay to the complaining party such sum of money as he may think a sufficient compensation, with or without the costs of the application, at his discretion; and if he thinks the complaint not proved, he may make an order dismissing the same complaint, with or without costs, at his discretion; and the order which the steward shall make in the premises may also be enforced in like manner as any order made in the small barmote court.
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By order.	
Proceedings upon order.	
All penalties (except those imposed upon barmaster) to be levied by warrant upon mineral property.	XLVII. All penalties imposed by virtue of this Act (except the penalties imposed upon the barmaster, and which are otherwise provided for), shall be recovered by levying the same under a warrant of the steward upon the mineral property of the person upon whom such penalty shall be imposed, which shall be within the jurisdiction of the barmote courts; and if the barmaster shall make a return to the steward that there is no mineral property within such jurisdiction, or not sufficient to raise the whole of the penalty and the fees and expenses allowed for the execution of the warrant, then such penalty, or so much thereof as the produce of the sale of such mineral property shall not, after paying the fees and expenses
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allowed for the execution of the warrant, be sufficient to satisfy, shall be recovered by action of debt in the county court, such action to be brought in the name of the steward; and a certificate signed by him, and sealed with the said seal, certifying the imposition of such penalty and the amount thereof, or so much thereof as shall not have been satisfied by such execution, shall be evidence, but not conclusive evidence, that the sum therein mentioned not to be recovered was due and unpaid at the date of the certificate. Evidence.

**XLVIII.** The proceedings of the barmote courts shall be in the forms given in the second schedule annexed to this Act, or to the like effect; and in any proceeding not thereby provided for it shall be lawful for the said steward to adopt such form as he shall think fit and applicable to such proceeding. Forms of proceedings as in second schedule,

**XLIX.** The fees and payments which shall be paid, had, and taken by the steward, head barmaster, and deputy barmasters, grand jury, attornies, and other persons, shall be such as are contained in the third and fourth schedules to this Act, and no other fee, gratuity, or reward whatever, shall be demanded, had, or taken by any of the said persons on any pretence whatever. Fees, as in 3rd and 4th schedules, and none others to be demanded.

**L.** An account shall be kept by the steward of all penalties imposed upon any person under the authority of this Act, and such penalties shall, except in cases where it is by this Act otherwise provided, be received by or on account of the said steward, and shall be paid by the said steward, when received, as to one moiety thereof to the Queen and her successors in right of her said duchy of *Lancaster*, and as to the other moiety thereof to the lessee for the time being of the duties of lot and cope, if there shall be any such lessee; and if there shall be no such lessee, then the whole of such penalties shall be paid to the Queen and her successors in right of her said duchy of *Lancaster*; and if any action or other proceedings other than an execution under the warrant of the said steward shall be necessary for the recovery of any penalty, such action or other proceedings shall be taken in the name of the steward. Account and application of penalties.

**LI.** For the protection of persons acting in the execution of this Act, it is hereby declared, that all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not afterwards or otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if after action brought a sufficient sum of money shall have been paid into court, with costs, by or on Clause for limitation of actions. Six months. One month's notice. Tender of amends.

Payment into court. behalf of the defendant; and in any such action the defendant may not only plead the tender or payment into court, as the case may be, but may also plead any other plea or pleas in bar, or a general demurrer.

Non-removal of proceedings in other courts, except as before mentioned. LII. No proceedings in the said courts, or either of them, or before the steward or barmaster, shall be removed into any other court by certiorari or otherwise, except in the cases herein provided for.

Costs in county and superior courts. LIII. In any action brought under the provisions of this Act in the county court, or in any of the superior courts, the plaintiff and defendant shall respectively be entitled to recover costs in the same cases, and to the same extent as they would be entitled if the action were a common action of debt on simple contract in the county court, or in any of the superior courts respectively.

Proceedings pending. LIV. Nothing in this Act contained shall affect any action, suit, or other proceeding, now pending in any court of law or equity; but such action, suit, or other proceeding, shall be dealt with and determined as if this Act had not been passed.

Parties may proceed in any other court having jurisdiction than small barmote court. LV. Nothing in this Act contained shall preclude any person from proceeding in any other court, having jurisdiction therein, in respect of any matter hereby made triable in the small barmote court.

Power to grand jury to make new rules. Articles, orders, &c. for working, carrying on, guidance and protection of mines; for regulating the practice and proceedings of barmote courts; LVI. It shall be lawful for the steward and grand jury at any great barmote court to make such new and additional customs, articles, rules, and orders, as to them shall seem expedient for the better regulation of the working and carrying on of the mines within the district under the provisions of this Act, and for the guidance and protection of the mines in reference to the working and carrying on of mines within the said district; and also for regulating the practice and proceedings of the great and small barmote courts, or of any views or other proceedings, and for the execution of any process of such courts, and in relation to any of the provisions of this Act, or of the articles and customs hereby established; and all such new and additional customs, articles, rules, and orders as aforesaid, shall be certified under the hand of the steward and seal of the said court to the chancellor for the time being of Her Majesty's duchy of *Lancaster*, the same having been previously submitted to the lessee, if any, for the time being, of the duties of lot and cope, and approved of in writing by him; and the same shall be published for three weeks consecutively in some newspaper printed in the county of *Derby*; and such chancellor may, after such publication, either allow or disallow such view (a) and additional customs,

to be published in newspaper, &c.;

(a) The word "view," although in the Act, should be read "new."

articles, rules, and orders, or any of them; and such of the new and additional customs, articles, rules, and orders, as shall be so allowed by such chancellor shall forthwith, after the approval thereof, be sealed with the seal of the said duchy of Lancaster, and laid before both houses of parliament (if parliament be then sitting, or, if parliament be not sitting, then within five days after the next meeting thereof), and no such new or additional custom, article, rule, or order shall have effect until six weeks after the same shall have been so laid before both houses of parliament; and any new or additional custom, article, rule, or order so allowed, and laid before parliament as aforesaid shall, from and after the expiration of such period of six weeks, be of the same force and effect as if the same had been enacted by authority of parliament, unless the same shall by vote or resolution of either house of parliament be objected to; and such new and additional customs, articles, rules, and orders, shall be carefully preserved by the steward: provided always, that such new and additional customs, articles, rules, and orders, shall not in any way affect the rights and interests of owners or occupiers of land.

to be laid  
before par-  
liament.

Proviso that  
new and  
additional  
customs not  
to affect the  
rights and  
interests of  
owners or  
occupiers of  
land.

LVII. Provided always, that, except as is herein provided, nothing in this Act contained shall extend to prejudice, diminish, alter, or take away any of the rights, privileges, powers, or authorities vested in or enjoyed by the Queen, her heirs and successors, either in right of her crown or in right of her duchy of Lancaster.

Saving rights  
of the crown,  
and of the  
duchy of  
Lancaster.

## FIRST SCHEDULE referred to;

### BEING

#### A SCHEDULE of ARTICLES and CUSTOMS by this Act established (b).

1. It is lawful for all the subjects of this realm to search for, sink, and dig mines or veins of lead ore upon, in, or under all manner of lands, of whose inheritance soever they may be (churches, churchyards, places for public worship, burial grounds, dwelling houses, orchards, gardens, pleasure grounds, and highways excepted); but if no vein of ore be found, and the person making search discontinues it for fourteen days, the land must be levelled and made good by the

All the sub-  
jects of realm  
may dig for  
mines, &c.  
in all places  
except, &c.

(b) Throughout this schedule, and indeed the whole of the enacting part of the Act; the words "Her Majesty," "The Queen's most Excellent Majesty," are unfortunately used instead of "The Queen," which is the only definite and legal designation of the executive power of the British nation.

- If discontinued, the land to be made good.
- Or action.
- As to mining in excepted places.
- Power to suspend the workings. Landowner has power to sell the calk, &c.
- Dish to be provided for measurement of the ore.
- Penalty.
- Ways to highway and water to be allotted to miners.
- To cease with mines. Miner to repair it.
- Miner entitled to use surface land for mining purpose.
- person making the search, within the space of six days after the expiration of the said fourteen days, or the owner of such land may level and make good the same, and recover the expenses thereof from the miner in an action of debt in the small barmote court, or in the county court: provided always, that nothing herein contained shall prevent or hinder the miner from following and working his vein, and searching for and getting lead ore under such excepted places as aforesaid; but in case by so doing he shall damage or injure any such excepted places or the surface thereof, the owner or reputed owner and occupier may recover from such miner compensation for such damage or injury, by action in the county court, if the damage shall not exceed fifty pounds, or otherwise by action in the superior courts; but in case the owner or reputed owner or occupier of such excepted place as aforesaid, apprehends that such working will endanger the security of such excepted places, the steward and grand jury shall have power to suspend the working of such vein, or to direct the working thereof, so as to prevent such damage.
2. In all cases the landowner shall have power to sell and dispose of the calk, feagh, spar, and other minerals and rubbish (except lead ore), and to remove the same from his land so soon as the lead ore has been extracted from it, when and as often as he thinks proper, and when not required for the use of the mine, but not so as to destroy or injure any mineral property, without the consent of the barmaster and any two members of the grand jury.
3. The barmaster and every deputy barmaster shall provide a dish or measure, which shall contain fifteen pints of water, and be adjusted in the presence of two of the grand jury, for measuring the ore; and they shall forfeit the sum of two pounds every time they are required to measure ore of any mine and are unprovided with such dish or measure, such penalty of two pounds to be recovered and received for his own use by the person who shall have required the ore to be measured, by an action in the county court.
4. The barmaster, together with two of the grand jury, shall provide the miners a way, either for foot passengers or carts as may be required, from the nearest highway to the mine, and also from the mine to the nearest running stream, spring, or natural pond of water, such ways to be set out in as short a course as may be practicable and reasonable. No compensation is to be claimed by the occupier or landowner for such ways, but such ways are not to be considered public, and the use thereof is to be limited to persons and purposes connected with the mine, and all rights of way are to cease when the mine shall be no longer worked. The parties entitled to use the way may make sufficient ways for use, and keep the same in repair; and may also use for mining purposes the water from the nearest running stream, spring, or natural pond.
5. Every miner shall, so long as his mine shall be worked, be entitled, without making any payment for the same, to the exclusive use of so much surface land as shall be thought

necessary by the barmaster and two of the grand jury, and be set out by them, for the purpose of laying rubbish, dressing his ore, briddling, making meers or ponds, and conveying water thereto, and any other mining purposes. The miner shall in all cases, before he commences any search or uses any land, make fences sufficient for the protection of cattle from any injury which might arise from his operations, and keep such fences in sufficient repair. Must fence it.

6. Any person may transfer his interest in any mine or vein to any other person by causing an entry of such transfer to be made by the barmaster in the book to be kept by him as mentioned in the fourteenth section; and such transfer, when so entered, shall be valid and effectual. Interest in mine, &c. transferable.

7. When ore has been raised by any miner, and he shall desire such ore to be measured, the miner shall give the barmaster twenty-four hours' notice of the time he intends to measure; and if the barmaster neglect or refuse to attend, then the miner may employ any two persons, one of them being on the grand jury, who shall measure such ore, and lay the duties aside, for the use of the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, for the use of Her Majesty and her successors. Miner to give notice to barmaster of his intention to measure. Neglect of barmaster.

8. No person shall sell any ore, or remove any ore from the mine, unless and until the same shall have been measured by the barmaster, or by such two persons as aforesaid, in the event of the non-attendance of the barmaster, upon pain of forfeiting the full value thereof to the lessee of the duties of lot and cope, or if there shall be no such lessee, then to Her Majesty, or her successors; and in case of non-payment of such value, after six clear days' notice requiring the same shall have been given by the barmaster to the miner, or affixed in or upon some part of the mine or the works thereof, the mine at which such ore was got shall be forfeited to the lessee of the said duties, and if there shall be no such lessee, then to Her Majesty and her successors; and possession thereof may be recovered in manner hereinafter provided. Ore not to be sold, &c. before measured, upon pain of forfeiture. How enforced.

9. The duties heretofore called the duties of lot and cope are, and shall be payable to Her Majesty and her successors, or to her or their lessee for the time being. The duty called lot is and shall be one thirteenth part of all ore raised within the jurisdiction of the barmote courts, as hereby declared and established, such thirteenth part to be set apart and taken by the barmaster when he measures any ore; and the duty called cope is and shall be the sum of fourpence for every load of ore measured at any mine within the jurisdiction aforesaid, the measure of such load being nine dishes of ore, whereof each dish shall be of capacity sufficient to hold fifteen pints of water. The said duties of lot and cope are and shall be payable in addition to the payments mentioned in any other article comprised in this schedule. And if any person shall neglect or refuse to pay the said duty of cope, the same may be recovered by the barmaster, on behalf of Her Majesty and her successors, or of her or their lessee for the time being, by To whom lot and cope payable. Definition of lot, and cope. Penalty on refusal to pay.

	action of debt in the small barmote court, or by action in the county court.
On finding vein, miner entitled to two meers in length.	10. If any new vein be found by any miner or any other person whatsoever, the first finder shall be entitled to two meers in length of the said vein, one meer on each side of the founder to be measured and set out by the barmaster, in the presence of two of the grand jury, on the surface of the ground within six days after notice given to him by the finder; and the third meer shall belong to the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, then to Her Majesty and her successors, to be set out in like manner at either extremity of the said two meers, at the option of the barmaster; and the finder shall be entitled to each subsequent meer in such vein, each way, to the extent he shall claim or require at the time of freeing.
The third meer to belong to lessee.	The founder, meers, and the barmaster, shall enter the particulars of the gift in his book; and if the lessee for the time being of the duties of lot and cope, and if there shall be no such lessee, then if Her Majesty or her successors, neglect or refuse duly and reasonably to work the meer so set out to such lessee, or Her Majesty or her successors as aforesaid, the finder shall have the right to purchase the said meer at such price as the steward and grand jury may fix and determine, or the finder may continue and maintain his workings through the said meer, upon laying aside for the use of the lessee or Her Majesty, as the case may be, all the ore that may be gotten therein, after deducting the expenses of getting the same.
Particulars to be recorded.	11. The barmaster shall not set out any ground under the tenth article until ore shall have been raised from the mine for which such ground shall be required, nor until there shall have been paid to the lessee for the time being of the duties of lot and cope, or if there shall be no such lessee, to Her Majesty and her successors, the first customary payment due to him, her, or them, such first customary payment being so much ore as shall be sufficient to fill the dish or measure mentioned in the third article, and being called the freeing dish; and the miner shall pay to the lessee for the time being of the said duties, and if there be no such lessee, to Her Majesty and her successors, a similar dish of ore for every third and subsequent meer which he shall reach of the vein in which he is working.
Right of finder to purchase,	12. If any miner shall work any mine or vein without having duly freed the same as provided by the eleventh article, or shall commit any trespass in any meer belonging to the lessee of the duties of lot and cope, or to Her Majesty and her successors, the mine or vein which shall have been so worked without having been freed, or the mine or vein of which the meer in which such trespass shall have been committed shall form a part, shall be forfeited to the lessee of the duties of lot and cope, and if there shall be no such lessee, then to Her Majesty and her successors, and possession thereof may be recovered on behalf of such lessee or of Her Majesty and her
The finder not to have ground until ore raised, &c.	
As to payment of freeing dishes.	
If miner work without having freed the mine, or commit a trespass on,	
mine to be forfeited, and possession obtained.	

successors, as the case may be, by action of title in the small barmote court in the name of the barmaster.

18. If any vein shall cross another vein, the miner who comes to the pee or intersection first shall have such pee or intersection, and may work therein as far as he can reach with a pick or hack, such pick or hack having a helve or shaft three quarters of a yard long, so that he stands wholly within the cheeks of his own vein when he works such pee or intersection.

Owners of  
crossing  
veins.

How to be  
worked.

14. When two veins approach each other but are parted with a rither, and such veins continue asunder for one meer or further in length without any joint of ore or other mineral crossing the same (such joint of ore or other mineral not being a new vein), and the rither during that distance in all parts exceeds three feet in thickness, then they are to be considered and treated as two distinct veins so long as they so continue asunder, but whenever they again meet the elder or prior title shall take the vein.

Ownership of  
approaching  
and con-  
nected veins.

15. In any dispute where the priority of title shall come in question the longest continued ownership shall prevail, but all gifts from the barmaster shall be considered as the origin and commencement of the title, and workmanship prior to such gift (if any) shall not avail; and in all cases the jury on the trial shall decide the fact of such priority.

As to priority  
of title.

16. If any person shall claim title to any mine, the claimant may commence an action in the small barmote court, by causing a plaint to be entered in the book mentioned in the fifth section; and if any miner shall commit a trespass in the mine or vein of any other person, the person aggrieved may commence an action in the small barmote court, by causing a plaint to be entered in an action of trespass, and may proceed to trial in the small barmote court, and shall there recover possession of the said mine in the action of title, or damages to be assessed by the jury for the said trespass; and any person claiming a debt against a miner for articles furnished to a mine, or for mining purposes, or for work or labour in, upon, or in respect of any mineral property, may cause a plaint to be entered in an action of debt, and shall annex the particulars of his debt to the summons, and proceed to trial in the small barmote court, and shall there recover such amount, if any, as upon proof shall appear to be due to him; but no evidence shall be admitted of any items in an action of debt not mentioned in the particulars annexed to the summons.

How titles to,  
or trespasses  
in mines to  
be litigated.

By action.

Also as to  
debts for ar-  
ticles sup-  
plied to a  
mine, for  
mining pur-  
poses.

Claim li-  
mited by  
particulars.

17. No miner or other person shall, except as herein-after mentioned, bring more than one action of title to recover the same mine, and a nonsuit shall be deemed of the same effect as a judgment for the defendant; but in actions of trespass or debt the plaintiff, if nonsuited, shall be allowed to commence a fresh action: provided always, that the steward shall in any case whatever, whether of title, trespass, or debt, have the power, if he shall think fit, to order a new trial to be had, upon such terms as he shall think reasonable, and in the meantime to stay the proceedings.

Only one  
action of  
title to re-  
cover the  
same mine,  
and nonsuit  
to be deemed  
a judgment  
for defend-  
ant.

Steward may  
direct new  
trial.



Content of  
meer.

Miner may  
free a pro-  
portion of  
meer.

If mines, &c.  
not wrought,  
to be for-  
feited after  
notice, and

to be given  
to other per-  
sons.

Proviso if  
the mine be  
drowned, &c.

Shareholder  
refusing to  
join his part-  
ners to for-  
feit his share,

to be re-  
covered in  
small bar-  
mote court.

Evidence.

Claimant of  
mine to try  
his title  
within three  
or six  
months, or  
barred.

Practice as to  
views by  
grand jury.

18. Every meer of ground shall contain thirty-two yards in length; and the miner shall be entitled to take and have set out for him any proportion of a meer, upon freeing the same, by payment of an amount of ore proportionate to the amount payable upon freeing a whole meer.

19. The barmaster, if he finds any mine or vein neglected and not wrought, and not hindered by water or for want of air, shall, if required so to do by any person or persons, send to the owner or reputed owner, where known to him, and if not known to him, then put up in some conspicuous place within the liberty in which the mine or vein is situate, a notice that such mine or vein will, at the expiration of three weeks, if not duly and reasonably worked to the satisfaction of the barmaster and grand jury, and no other sufficient reason assigned to them, be forfeited, and if at the expiration of the said three weeks the mine or vein is not so worked, the barmaster, in the presence of two of the grand jury, may give such mine or vein to any person or persons willing to work the same; provided that nothing herein contained shall authorize the barmaster to give away such mine or vein if the owner thereof be unable to work the same by reason of such mine or vein being under water, or for want of air, so long as the owner thereof is using efficient and diligent means to the satisfaction of the barmaster and grand jury to relieve such mine or vein.

20. If any person has shares in a mine, and refuses to join his partners or the owners of the other shares in working the same, or to pay his proportion of the expenses of working the same for the space of six days after the same has been demanded by the party complaining or his agent, he shall forfeit his part and share to his partners, who shall be entitled to recover the same against such defaulting owner in an action of title in the small barmote court, and the only evidence necessary in such action to enable the plaintiff to obtain judgment shall be proof that the plaintiff has worked the said mine, and the amount of the expenses incurred, and a demand of payment of defendant's share thereof as aforesaid, and the neglect or refusal of defendant to pay it for the space of six days after the demand; and it shall be no defence to such action that the plaintiff is partner or joint owner with the defendant in the mine or shares sought to be recovered.

21. If any person be possessed of any mine, and be working the same, and any other person claims title thereto, such claimant shall, within the space of three calendar months next after he shall have had notice of the same being in open workmanship, and at all events within six calendar months after the same shall have been in open workmanship, whether he shall have had notice or not, assert his claim by an action of title in the small barmote court, or else such claim shall be barred.

22. If the barmaster shall, in any matter connected with the duties of his office, require a view to be made by the grand jury, or if the plaintiff or defendant in any action of title or trespass in the small barmote court, or if any miner or other

person shall for any purpose require a view to be made of the mine or works of any person whomsoever, then and in each and every of such cases a view shall be made, and the person so requiring a view shall, when the grand jury are assembled, deliver to the steward a bill of directions describing the mine or particular part or parts of a mine, or ground or works, or other matters or things, which the grand jury are required to view, and stating the question upon which their opinion is required, but such bill of directions shall contain no argument or comment whatever, and thereupon the steward shall openly read the said bill of directions to the grand jury, and, if the same is in the opinion of the steward properly framed, deliver it to one of the grand jury, who shall take the same with him for the guidance of himself and the rest of the grand jury in making their view; but if any person affected by the said proceeding object to the said bill of directions or to any cross bill delivered as herein-after mentioned as containing matter of argument, assertion, or comment not being a description of the mine, ground, or works, or other matters or things to be viewed, or a statement of the question necessary for the guidance of the grand jury in making their view, the steward before delivering the bill or cross bill to the grand jury shall in all cases decide upon the validity of such objections, and if he thinks the same well founded shall cause the bill or cross bill to be altered and corrected in such manner as the steward shall think right, and after making such view such of the grand jury as shall concur in opinion shall in answer to such bill and cross bill, if any, write their opinion and sign it, and such of the grand jury as shall not concur in opinion with any of their fellow jurymen shall write separate opinions and sign them, so that the signature of each of the grand jury shall be affixed either to his own separate opinion or to that of himself and some other or others of the said grand jury; and the said bill and cross bill, if any, with the opinions, shall be delivered to the steward, who shall thereupon openly read the same in the presence of the grand jury and of the person or persons who shall have preferred such bill or cross bill; and such bill and cross bill, if any, and the opinions thereon, shall be kept by the steward with the documents of the barmote courts, but the steward shall, if required by the plaintiff or defendant in the action in which the view shall have been had, permit such bill and cross bill, if any, and the opinions thereon, or either of them, to be used by such plaintiff or defendant for the purpose of evidence on the trial of the action: provided always that no plaintiff or defendant in any action shall be entitled to require a view unless he shall have given notice thereof in writing to the barmaster six clear days at the least before the day appointed for the trial; and the expenses of views shall be paid in manner herein-after mentioned, that is to say, in cases where the barmaster shall require such view the expense shall be borne by the owner of the mine or other matter to be viewed, provided the steward shall consider that such view was properly required by the barmaster, and shall allow such expenses;

Bill of directions.

Form of.

Steward to decide on validity of bill of directions.

Amend same.

Grand jury to

write their opinion on bill and sign it.

To be openly read by steward.

And may be used as evidence.

Notice must be given of view.

Costs of views.

- and in cases where the view shall be required by a plaintiff or defendant in any action, the expenses of such view shall be costs in the cause, and abide the event of the action; and in all other cases the expenses shall be paid by the person requiring the view, if no cross bill is presented, and if a cross bill is presented, then in equal proportions by the person requiring the view and the person presenting the cross bill. Any person who may be affected by the proceedings at any view may appoint a shower to accompany the grand jury, and to show on his behalf the place to be viewed.
- Shower to be appointed.
23. Any person who may be affected by the opinion of the grand jury on any view may, if he thinks fit, at the same view deliver a bill of directions to the said grand jury, which second bill shall be called a cross bill of directions, in similar form to the original bill, stating the question on which their opinion is requested, and the steward shall in like manner, immediately after reading the original bill, read over such cross bill, and deliver the same to one of the grand jury to take to the mine or ground for the guidance of himself and the rest of the grand jury.
- Cross bill of directions.
- Form and practice of.
24. When a bill of directions and also a cross bill shall be delivered to the grand jury at the same view, it shall not be requisite for them to write their opinions until they have completed the view on the cross bill, unless they think proper to do so, and in no case shall it be competent for the grand jury to examine any evidence produced by either party.
- Grand jury when there is a cross bill to reserve their opinion on bill, &c. Not to receive oral evidence.
25. If any person shall obstruct the grand jury in viewing any mine or works, the grand jury shall state such fact in writing, and return such writing signed by any one or more of them, together with the bill of directions, and cross bill, if any, to the steward, and the person so obstructing shall forfeit by way of penalty such sum not exceeding twenty pounds as the steward shall think fit to impose, and the steward shall have power to impose a fresh penalty every day on which such obstruction is repeated; and if any such penalty be not paid within three days after the same shall be imposed, the steward shall issue his warrant for levying the same. Before imposing any such penalty, the steward shall give to the offender seven clear days' notice to show cause, at a time and place situate within the hundred of the High Peak, to be named in such notice, why a penalty should not be imposed.
- Penalty for obstructing view of grand jury.
- Twenty pounds.
- Warrant and distress.
26. If any person shall, by virtue of any sough engine or other means, unwater or give relief to any mine or vein which may be under water, and the further working thereof be hindered, the owner of any such mine so relieved shall from time to time, so long as such relief be continued, deliver to the person giving such relief as aforesaid such part and portion of all the ore which at any time thereafter shall be got and raised in such mine or vein under the level at which such relief was given, as the barmaster and grand jury may from time to time fix and determine; such part and portion of the said
- If one unwater or give relief to a mine, owner to deliver to him giving the relief a portion of the ore raised under the level unwatered, as

ore to be delivered and dressed and made merchantable by the owner of such mine without any fraudulent concealment or wilful diminution, and to be discharged and free from all charges in getting and dressing; and the value of such ore, if it shall not exceed fifty pounds, shall be recoverable in the county court, or, if such value shall exceed fifty pounds, in one of the superior courts at Westminster.

27. Any person having two or more veins lying contiguous to each other, or connected by any shafts, galls, or ways, may, with the consent in writing of the barmaster or grand jury, consolidate the title to such veins, and an entry shall be made in the barmaster's book to the effect that the titles to such veins are thenceforth consolidated, and the said veins shall from the time of such entry in the said book be considered and treated as held under one; and the new title of the said consolidated veins, and nothing herein contained shall prejudices or affect the right or title of any person to any mine or vein which may have been heretofore united to or consolidated with any other mine or vein, and that the possession or working of any of the mines or veins in such consolidated titles respectively shall be considered as the working of the whole thereof, and so long as any part thereof be so worked, the same shall not be liable to be operated upon by the barmaster in pursuance of the nineteenth article.

28. If the grand jury shall be summoned to any view by any person, not being plaintiff or defendant in any action in the small barmote court, for the purpose of delivering their opinion as to whether any other person is working in any mineral ground belonging to the persons so summoning the grand jury, and the majority of the grand jury assembled at any such view, and give it as their opinion that such is in all probability the case, but that for want of workmanship the fact does not yet clearly appear, it shall be lawful for the steward to require such other person to give to the steward security for the value of all ore which may be gotten in his workings thenceforth, until such time as sufficient working shall have been done to make the truth appear; and unless security shall be given unto and to the satisfaction of the steward, it shall be lawful for him to direct and authorize the barmaster to retain all ore gotten in the workings of such other person so failing to give security, until such security shall be given, or until sufficient further working shall have been done to enable the grand jury at any adjourned view to form a satisfactory opinion; and if the grand jury assembled at any such adjourned view, or the majority of those so assembled, shall state their opinion to be that the workings of the person originally summoning the grand jury and of such other person form one and the same title, the steward shall thereupon order the barmaster to deliver to the person who shall have originally summoned the grand jury the ore which shall have been so retained as aforesaid; or, if security shall have been given as aforesaid, then the person who shall have originally summoned the grand jury shall be entitled to the benefit of such

barmaster, &c., shall direct.

Or value to be recovered in county or superior courts.

Owner of contiguous or connected veins may consolidate their titles.

Exemption of such veins from nineteenth article.

Summoning of grand jury to view disputed workings.

Miner to give security for the value of the ore.

In default to detain ore.

Workings to be delivered to owner, and if he be the claimant he can recover

on the security or the detained ore.

security, to the extent of the value of the ore which shall have been gotten by such other person as aforesaid since the original view, and shall be entitled to use the name of the steward, if necessary, for enforcing such security, and if either party feels himself aggrieved, such party may prosecute his claim in the small barmote court.

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**THIRD SCHEDULE;  
CONTAINING  
FORMS OF PROCEEDINGS.**

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In the High Peak Small Barmote Court.

*Form of Plaint.*

Plaintiff's Name.	Plaintiff's Place of Abode and Calling.	Defendant's Name.	Defendant's Place of Abode and Calling.	Nature of Action.
John Smith	Castleton	Rd. Davis	Hucklow	Action of Title, Trespass, or Debt, as the case may be.

---

In the High Peak Small Barmote Court.

*Summons in Title.*

To C. D. (the defendant).

You are hereby summoned to appear at a small barmote court to be held at ———, on the ——— day of ———, at the suit of A. B., plaintiff in an action of title in the High Peak small barmote court, respecting, &c. [*describe the mine claimed*].

Given under the seal of the court this ——— day of ———,  
By the court, E. T., Steward.

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In the High Peak Small Barmote Court.

*Summons in Trespass or Debt.*

To C. D. (the defendant).

You are hereby summoned to appear at a small barmote court to be held at ———, on the ——— day of ———, in an

action of trespass in the small barmote court, at the suit of A. B., for £—— damages, for a trespass committed by you at —— [if in debt, say “in an action of debt in the High Peak small barmote court for the sum of £—— (the sum claimed) for goods sold and delivered,” “wages,” or, as the case may be, the particulars whereof are hereto annexed].

Given under the seal of the court, this —— day of ——,

By the court,

E. F. Steward.

*Form of Particulars in an Action of Debt to be annexed to the Summons or written at the Foot thereof.*

In the High Peak Small Barmote Court.

A.B., plaintiff,

and

C.D., defendant.

Particulars of the debt for which this action is commenced.

1850:

£ s. d.

January 3. To one barrel of powder, 50lbs. at 6d. per lb. - - - 1 5 0

[Add all other items making up debt.]

[If for wages or work done.]

To driving seven fathoms in West Forefield [describe work], at 1l. 5s. per fathom - 8 15 0

5th to 15th. To working nine shifts, at 2s. 3d. per shift - - - 1 0 3

30th. To four weeks wages, at 12s. per week 2 8 0

„ To six days' work, man and horse [or cart] grinding [or leading] describing work, at 5s. 6d. per day - - 1 13 0

£

Above are the particulars of debt in this action. As witness my hand.

A.B., or

A.B. by E.F., his attorney or agent.

*Judgment against Defendant for Payment of Debt or Damages.*

In the High Peak Small Barmote Court, held at ——, within the hundred of High Peak in the county of Derby, the —— day of ——.

Between A.B., plaintiff,

and

C.D., defendant.

After hearing this cause, it is, on the —— day of ——, [insert day when judgment is given], adjudged that the said plaintiff do recover against the said defendant the sum of £—— for his debt [or damages by him sustained], together with the costs of the suit amounting to the sum of £——.

Given under the seal of the court, this —— day of ——.

By the court,

A.B., Steward.

*Appendix.**Judgment against Plaintiff.*

In the High Peak Small Barmote Court, held at ———,  
within the hundred of High Peak in the county of  
Derby, the ——— day of ———,

Between A.B., plaintiff,

and

C.D., defendant.

It is, on the ——— day of ———, adjudged that judgment  
do pass against the said plaintiff, and that the said defendant  
do recover against the said plaintiff £——, for the costs  
incurred by the said defendant in his defence of this action.

By the court,

A.B., Steward.

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*Judgment in case of Nonsuit.*

In the High Peak Small Barmote Court, held at ———,  
within the hundred of High Peak in the county of  
Derby, the ——— day of ———.

Between A.B., plaintiff,

and

C.D., defendant.

It is, on the ——— day of ———, adjudged that judgment  
by way of nonsuit do pass against the said plaintiff, and that  
the said defendant do recover against the plaintiff the sum of  
£——, for the costs incurred by the said defendant in his  
defence of this action.

Given under the seal of the court, this ——— day of ———.

By the court,

A.B., Steward.

---

*Judgment for Recovery of Possession.*

In the High Peak Small Barmote Court, held at ———,  
within the hundred of High Peak in the county of  
Derby.

Between A.B., plaintiff,

and

C.D., defendant.

After the hearing of this cause, it is, on the ——— day of  
———, adjudged that the said plaintiff do recover against the  
said defendant possession of a certain mine at ———, together  
with the costs of the suit, amounting to the sum of £——.

Given under the seal of the court, this ——— day of ———.

By the court,

A.B., Steward.

---

*Execution against the Goods of Defendant.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,

and

C.D., defendant.

Whereas at a small barmote court duly holden at ———,

within the jurisdiction of the said court, before the steward of the said court, the said plaintiff, by the judgment of the said court, on the — day of —, recovered against the said defendant the sum of £—, for a certain debt before that time due and owing to the said plaintiff [or for certain damages by him sustained, or possession of a certain mine situate, &c.], together with the sum of £—, for costs of the suit by the said plaintiff in that behalf expended: and whereas three days have elapsed since the day on which such judgment was given: and whereas the sum of £— or the sum of £— being part of the said sum of £— has not been paid to the said plaintiff: these are therefore to require and order you forthwith to make and levy the said sum of £—, together with the lawful fees and expenses allowed by the High Peak Mining Customs and Mineral Courts Act, 1851, by distress and sale of the mineral property of the said defendant wheresoever they may be found within the jurisdiction of this court.

Given under the seal of the court, this — day of —.  
 To the barmaster of } By the court,  
 the High Peak. } A.B., Steward.

*Execution against the Goods of Plaintiff.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,  
 and  
 C.D., defendant.

Whereas at a small barmote court duly holden at —, within the jurisdiction of the said court, the said defendant on the — day of —, by the judgment of the said court, recovered against the said plaintiff £— for his costs of defence of an action of title, trespass, or debt: and whereas three days have elapsed since the day on which such judgment was given: and whereas the said sum of £— has not been paid to the said defendant: you are therefore required to make and levy the said sum of £— together with the lawful fees and expenses allowed by the High Peak Mining Customs and Mineral Courts Act, 1851, by distress and sale of the mineral property of the said plaintiff wheresoever it may be found within the jurisdiction of this court.

Given under the seal of the court, this — day of —.  
 To the barmaster of } By the court,  
 the High Peak. } A.B., steward.

*Warrant for Recovery of Possession.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,  
 and  
 C.D., defendant.

Whereas after the hearing of this cause it was, on the —



*Appendix.*

day of ———, at a court holden at ———, within the jurisdiction of this court, adjudged that the said plaintiff should recover against the said defendant possession of a certain mine at ———, and whereas the said defendant has not delivered up possession of the said mine, and three days have elapsed since such judgment was recovered: you are therefore required to give possession of the said mine to the said plaintiff.

Given under the seal of the court, this ——— day of ———.

To the barmaster of	}	By the court,
the High Peak.		
		A.B., Steward.

*Summons to Grand Jurors to attend the Great Barmote Court or on a View.*

You are hereby required to attend the High Peak great court to be held at ———, within the hundred of High Peak, in the county of Derby, or to attend the barmaster on a view, to be held at ———, on the ——— day of ———.

Dated this ——— day of ———, 185—.

A.B., Barmaster, or

To C.D., . C.D., Deputy barmaster.

*Summons to Jurors to attend Small Barmote Court.*

You are hereby required to attend the High Peak small barmote court at ———, at ——— o'clock in the forenoon, to serve as a juror on the trial of causes at the said court; and if you fail therein you will be liable to a penalty not exceeding £10, to be levied on your mineral property.

Dated this ——— day of ———, 185—.

A.B. Barmaster, or

To C.D. [*add residence.*] C.D., Deputy barmaster.

*Bill of Directions on a View.*

To the grand jury for the High Peak Barmote Courts, met at ———, within the hundred of High Peak, in the county of Derby, on the ——— day of ———, 185—.

You are desired by C.D. [*party calling the jury*] to view, &c. [*describing the mine, or particular parts of the mine, or the works, or other matters or things, which the jury are required to view*], and then give your opinion whether, &c., clearly stating the question upon which the opinions of the grand jury are required.

If the grand jury are required to dial the mine, add "and you are requested to dial the said mine, commencing, &c. [*describing the limits within which such dialling is to be made*], and to lay out your dialling on the surface, and to deliver your dial card, with your opinion, to the steward."

*Return of Grand Jury to a Bill or Cross Bill of Directions.*

We the grand jury [where all agree in opinion, or, we, [or I] the undersigned members [or member] of the grand jury, where there is difference of opinion] for the High Peak barmote courts, assembled this — day of —, to view, &c., having had a bill [or cross bill] of directions given to us, to declare, that we have proceeded to view, &c., as directed by the said bill [or cross bill], and do declare our [or my] opinion to be that, &c., giving their [or his] opinion clearly on the question proposed]. As witness our [or my] hands [or hand].

Signatures.

*Memorandum to be added after the Signatures of the Majority, where One or more of the Grand Jury do not concur in the Return.*

We [or I] the undersigned do not concur in the above return, and are [or am] of opinion that, &c., stating their [or his] opinion clearly on the question proposed.

As witness our [or my] hands [or hand].

Signatures.

*Form of Notice in pursuance of the Twenty-fifth Article of the Customs.*

You are hereby required to attend at —, on the — day of —, before the steward of the High Peak barmote courts, to show cause why a penalty should not be imposed upon you for obstructing the grand jury on the — day of —.

Given under the seal of the court, this — day of —, 185—.

A.B., Steward.

*Form for imposing any Penalty which may be imposed under the Act.*

I, —, steward of the High Peak barmote courts, do hereby, by virtue of the High Peak Mining Customs and Mineral Courts Act, 1851, impose on C.D., —, the sum of £—, as a penalty for an offence by him committed against the said Act, and I order him to pay the said sum to —, on or before the — day of —, in the year of our Lord 185—.

Given under the seal of the court, this — day of —, 185—.

A.B., Steward.

*Warrant to levy any Penalty or Sum of Money that may be imposed or ordered to be paid under the Act.*

Whereas on the — day of — a certain sum of £— was ordered to be paid by A.B. to C.D. by the steward

of the High Peak barmote court, or a certain penalty of £— was imposed upon A.B. by the steward of the High Peak barmote court, for an offence against the High Peak Mining Customs and Mineral Courts Act, 1851, and such sum of £— or penalty was ordered to be paid to —, on or before the — day of —, and the same has not been paid.

You are therefore required to levy on the mineral property of the said A.B. within the jurisdiction of the said barmote court the said sum of £— or penalty of £—, together with the lawful fees and expenses allowed by the High Peak Mining Customs and Mineral Courts Act, 1851.

Given under the seal of the court, this — day of —, in the year 185—.

To the barmaster of )  
the High Peak. }

A.B., Steward.

#### *Barmaster's Return of Execution of any Warrant.*

I A.B., barmaster of the High Peak, in obedience to the within-written warrant, and by authority of the same, did on the — day of —, 185—, execute the same by delivering to the plaintiff within named possession of, &c., or by levying the sum of £— within mentioned, together with £—, the fees and expenses allowed for the execution thereof, by sale of, &c., and the said sum of £— has been applied by me in discharging the fees and expenses of the said levy, and the said sum of £— has been paid by me to —.

As witness my hand, this — day of —, 185—.

#### *Return that Barmaster has been unable to Execute any Warrant.*

I, A.B., barmaster of the High Peak, do make this return to the steward of the High Peak barmote court within-mentioned, and declare, that I have not yet been able to execute the within warrant, by reason that the within-named defendant hath no mineral property within the jurisdiction of this court, or, if part only has been levied, that I have levied the sum of £— and no more, by sale of the mineral property of the within-named plaintiff, or defendant, and he hath no mineral property within the jurisdiction whereof I can levy any part of the residue. As witness my hand, this — day of —, 185—.

#### *Subpoena.*

A.B., steward of the High Peak barmote courts, to —, greeting. You and every of you are hereby required personally to attend at the small barmote court to be holden at —, on the — day of — next, by — of the clock in the forenoon of the same day [if the witness is required to bring with him any documents, describe them

*here*], to testify the truth according to your knowledge in a certain action in the barmote court now depending between \_\_\_\_\_, plaintiff, and \_\_\_\_\_, defendant, in an action of [title, trespass, or debt, as the case may be], at the said court to be tried. Should you fail herein you will be liable to be proceeded against in like manner as for disobedience to a subpoena issuing out of the court of Queen's Bench at Westminster.

Given under the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, in the year 185—.

A.B., Steward.

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*Order to adjourn Proceedings either in the Great or Small Barmote Court or before the Steward.*

It is ordered, that the proceeding in this matter [*whatever it be, stating it*] be adjourned until \_\_\_\_\_, [*add, if necessary, and that \_\_\_\_\_ do pay to \_\_\_\_\_, costs, or other the terms if any, upon which the adjournment is made*].

Given under the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, in the year 185—.

By the court,

A. B., Steward.

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*Order to stay Proceedings.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,  
and

C.D., defendant.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, in the year 185—.

By the court,

A.B., Steward.

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*Order for a New Trial.*

In the High Peak Barmote Court, held at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_.

Between A.B., plaintiff,  
and

C.D., defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties [*here state the terms and conditions, if any, of such new trial*].

Given under the seal of the court, this \_\_\_\_\_ day of \_\_\_\_\_, in the year 185—.

By the court,

A.B., Steward.

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of the High Peak barmote courts, *or* a certain penalty of £—— was imposed upon A.B. by the steward of the High Peak barmote courts, for an offence against the High Peak Mining Customs and Mineral Courts Act, 1851, and such sum of £—— *or* penalty was ordered to be paid to ——, on or before the —— day of ——, and the same has not been paid.

You are therefore required to levy on the mineral property of the said A.B. within the jurisdiction of the said barmote court the said sum of £—— *or* penalty of £——, together with the lawful fees and expenses allowed by the High Peak Mining Customs and Mineral Courts Act, 1851.

Given under the seal of the court, this —— day of ——, in the year 185—.

To the barmaster of }  
the High Peak. }

A.B., Steward.

#### *Barmaster's Return of Execution of any Warrant.*

I A.B., barmaster of the High Peak, in obedience to the within-written warrant, and by authority of the same, did on the —— day of ——, 185—, execute the same [by delivering to the plaintiff within named possession of, &c.], *[or* by levying the sum of £—— within mentioned, together with £——, the fees and expenses allowed for the execution thereof, by sale of, &c.], and the said sum of £—— has been applied by me in discharging the fees and expenses of the said levy, and the said sum of £—— has been paid by me to ——.

As witness my hand, this —— day of ——, 185—.

#### *Return that Barmaster has been unable to Execute any Warrant.*

I, A.B., barmaster of the High Peak, do make this return to the steward of the High Peak barmote court within-mentioned, and declare, that I have not yet been able to execute the within warrant, by reason that the within-named defendant hath no mineral property within the jurisdiction of this court, *or, if part only has been levied*, that I have levied the sum of £—— and no more, by sale of the mineral property of the within-named plaintiff, *or* defendant, and he hath no mineral property within the jurisdiction whereof I can levy any part of the residue. As witness my hand, this —— day of ——, 185—.

#### *Subpoena.*

A.B., steward of the High Peak barmote courts, to ——, greeting. You and every of you are hereby required personally to attend at the small barmote court to be holden at ——, on the —— day of —— next, by —— of the clock in the forenoon of the same day *[if the witness is required to bring with him any documents, describe them*

*here*], to testify the truth according to your knowledge in a certain action in the barmote court now depending between ———, plaintiff, and ———, defendant, in an action of [title, trespass, or debt, *as the case may be*], at the said court to be tried. Should you fail herein you will be liable to be proceeded against in like manner as for disobedience to a subpoena issuing out of the court of Queen's Bench at Westminster.

Given under the seal of the court, this ——— day of ———, in the year 185—.

A.B., Steward.

*Order to adjourn Proceedings either in the Great or Small Barmote Court or before the Steward.*

It is ordered, that the proceeding in this matter [*whatever it be, stating it*] be adjourned until ———, [*add, if necessary, and that ——— do pay to ———, costs, or other the terms if any, upon which the adjournment is made*].

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A. B., Steward.

*Order to stay Proceedings.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,  
and

C.D., defendant.

It is ordered, that all further proceedings in this action be stayed.

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A.B., Steward.

*Order for a New Trial.*

In the High Peak Barmote Court, held at ———, the ——— day of ———.

Between A.B., plaintiff,  
and

C.D., defendant.

It is ordered, that the judgment in this case, and all subsequent proceedings thereon, be set aside, and a new trial had between the parties [*here state the terms and conditions, if any, of such new trial*].

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A.B., Steward.

*Appendix.**Summons on Interpleader.*

In the High Peak Small Barmote Court.

Between A.B., plaintiff,

and

C.D., defendant.

Whereas E.F., of ———, hath made a claim to certain mineral property which has been seized and taken in execution under and by virtue of process issuing out of this court in this action: you are therefore hereby summoned and required to be and appear before the steward of the said court, at ———, on the ——— day of ———, at the hour of ———, when the said claim will be adjudicated upon, and such order made thereupon as to the steward shall seem fit.

Given under the seal of the court, this ——— day of ———, in the year 185—.

By the court,

A.B., Steward.

*Note.*—This summons is to be served upon the party claiming the property seized, and upon the plaintiff or defendant in the action, according as the execution may have been issued on behalf of plaintiff or defendant. If the execution has been issued to levy a penalty, this form must be altered to suit the circumstances, and the summons must in that case be served upon the party owing the penalty and the claimant.

### THIRD SCHEDULE;

#### BEING

#### LIST OF FEES TO BE ALLOWED ON TAXATION UNDER THIS ACT.

##### *To the Steward.*

	£	s.	d.
For attending view by grand jury - - -	1	1	0
For entering every plaint, issuing every summons or subpoena - - -	0	2	6
For swearing every witness in a cause - - -	0	1	0
For every warrant to deliver possession, or to levy any debt or damages, or money or costs, or penalty - - -	0	2	6
For a certified copy of any proceeding in the great or small barmote court - - -	0	5	0
For copy of any entry or accounts - - -	0	0	6
For any search amongst or examination of the documents in the custody of the steward - - -	0	1	0
Mileage, 1s. a mile from his place of residence to the place where the court is held, such mile- age in no case to exceed 11.			

*To Attornies.*

	£	s.	d.
For attending every witness examined in court, and taking down his evidence - - - - -	0	6	8
Drawing brief, 6s. 8d. per sheet.			
Making fair copy thereof. (Half charge allowed for drawing.)			
For attending court on the trial, and conducting same - - - - -	2	2	0
And also mileage, 1s. per mile, from his place of residence to the place where the court is held, such mileage in no case to exceed 1l.			
For every copy of subpoena - - - - -	0	1	0
If duces tecum, 6d. additional.			
For attending to serve every witness with subpoena - - - - -	0	2	6
And 1s. per mile from attorney's residence, if witness resides within the hundred of High Peak, such mileage in no case to exceed 1l.; if in any other place, the sum paid to any agent employed to serve same, provided such sum be approved and allowed by the steward.			
Such fees to counsel as the steward shall think reasonable, and allow on taxation.			

*To the Barmaster of the High Peak.*

For summoning the jury to attend small barmote court, 1l. 1s. for each cause appointed to be heard at the court for which the jury is summoned; such sums to be paid by the plaintiff if the cause do not proceed to the taxation of costs.			
For attending small barmote court, 10s. 6d. for each cause appointed to be heard thereat, to be paid by the plaintiff if the cause do not proceed to the taxation of costs.			
For attending a view, except where required by himself - - - - -	0	10	6
Entering each freeing - - - - -	0	1	0
Copy of same - - - - -	0	1	0
Entry of gifts for each vein - - - - -	0	2	0
Entry of every transfer for each vein - - - - -	0	1	0
Copy of same - - - - -	0	1	0
Service of every notice, summons, or order - - - - -	0	2	0
For executing any warrant issued by the steward:			
1st. Where the amount to be levied shall be less than 20l.:			
Seizing the property - - - - -	0	3	0
Each man in possession, per day - - - - -	0	2	6
All expenses of advertisements, if any - - - - -	0	10	0



	£	s.	d.
Catalogues, sale and commission, and delivery of goods, 1s. in the pound on the produce of the sale.			
2nd. Where the amount to be levied shall exceed 20l.:			
Seizing the property - - - -	0	10	0
Each man in possession, per day - -	0	2	6
All expenses of advertisements, if any -	1	1	0
Catalogues, sale and commission, and delivery of goods, 1s. in the pound on the produce of the sale.			

*Deputy Barmasters.*

For attending on a view by the grand jury, except where required by himself - - - -	0	10	0
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*To Grand Jury.*

For attending on a view, each man, when called to act within his own liberty - - - -	0	4	0
When called to act out of his own liberty - - - -	0	6	0

## FOURTH SCHEDULE.

FEEs allowed to the BARMASrER of the HIGH PEAK and DEPUTY BARMASrERS; such fees to be a debt due from the person on whose behalf the duties shall be performed, and to be paid either to the barmaster or his deputy, according as the duty shall be actually performed by him or by his deputy.

	£	s.	d.
Setting out any way under the 4th article - - -	0	5	0
Setting out land under the 5th article - - -	0	5	0
Setting out meers, for each meer subsequent to the third meer under the ninth article (c) - - -	0	0	4

(c) Should not this be the tenth article? see *ante*, pp. 15, 110.

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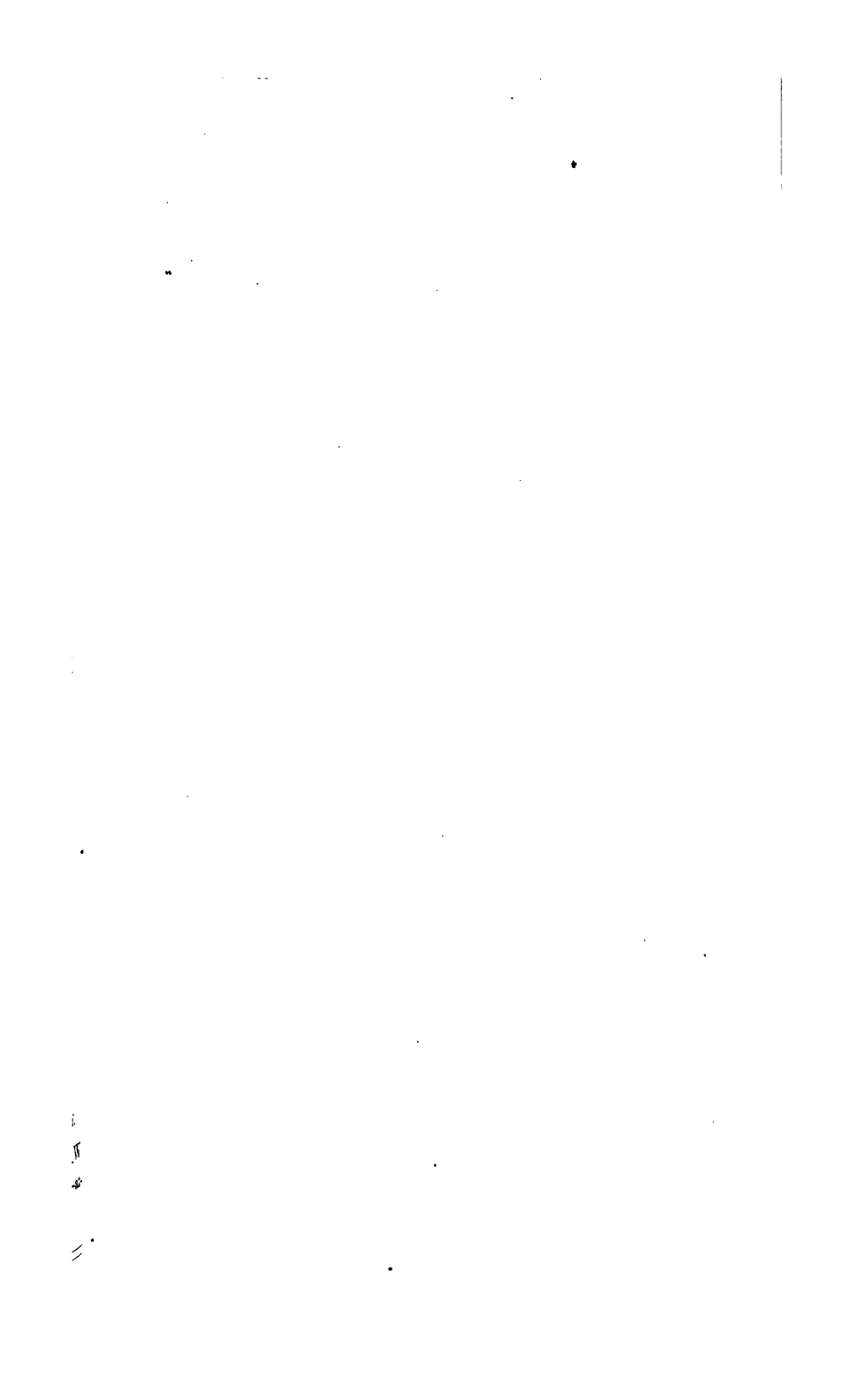
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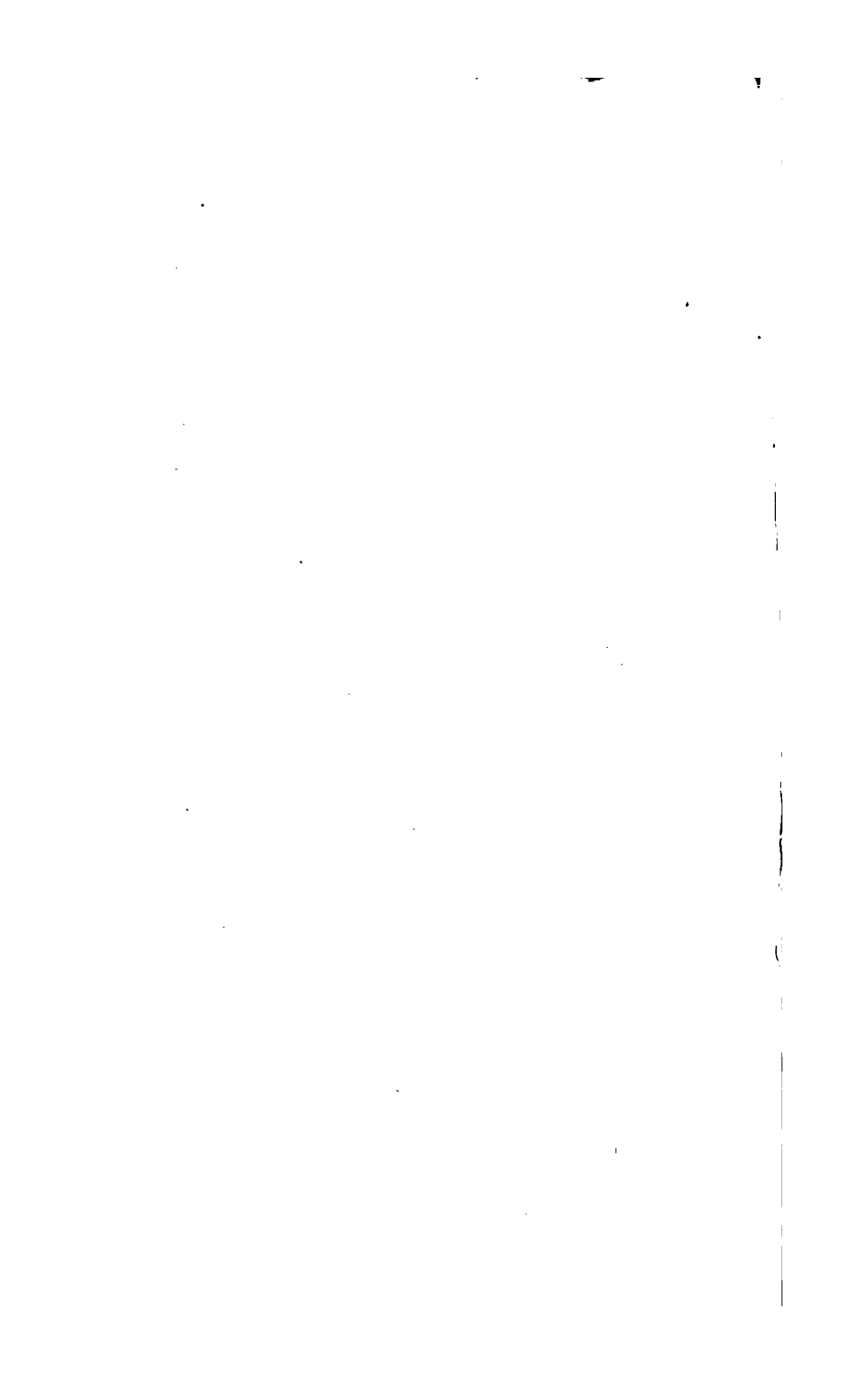
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